

# Child Support in Utah

By Helen E. Christian

**D**ivorce, second only to the death of a parent, is the most traumatic childhood experience because it significantly alters children's lives. This article focuses on one of the changes inherent in divorce — the financial support of children.

## BACKGROUND

It is a fact of life that children need to be supported by their parents, both during the marriage relationship and following a divorce. The obligation to pay child support is recognized by statute providing that the court may enter orders relating to the children that include reasonable and necessary medical expenses and child care expenses. Utah Code Ann. § 30-3-5 (1993). Before the enactment of the Child Support Guidelines (Guidelines), court-ordered amounts of child support varied throughout the State, and an obligor parent in one county could be ordered to pay much more or much less than a parent earning a comparable wage in another county.

In 1989, pursuant to federal mandate, the Utah Legislature enacted the Guidelines to ensure that children would receive a comparable level of support after the divorce of their parents regardless of where they live in Utah. Utah Code Ann. § 78-45-7 et. seq. (1989). The Guidelines accomplished this parity by establishing child support obligation tables based on the combined incomes of the divorcing parents. The 1989 statutes have been amended to clarify certain statutory language, but the support obligations, including the support tables, remained the same until this year. Effective July 1, 1994, the Guidelines will include amended support tables and a requirement that the parties share obligations for both maintaining health insurance and paying premiums for that insurance.

## USE OF GUIDELINES

### I. Application of Presumption

The Guidelines are presumed to apply



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in any proceeding establishing or modifying an award of child support in Utah. The court has the discretion to conclude, based upon sufficient findings, that use of the Guidelines in a particular case would be "unjust, inappropriate, or not in the best interests" of a child or children. Utah Code Ann § 78-45-7.2. However, the presumption is usually upheld and courts and parties rely on the

Guidelines, thereby substantially eliminating one level of controversy in divorce or modification proceedings.

## II. Determination of Income

The Guidelines are based on an "income shares" approach that sets the level of support each party is required to pay based on his or her proportionate share of income in relation to the total gross income of the two parties. The Guidelines define "gross income" as:

(a) prospective income from any source, including non-earned sources, except under Subsection (3); and

(b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment compensation, disability insurance benefits, and payments from "nonmeans-tested" government programs.

Utah Code Ann. § 78-45-7.5.

Although this definition of income sounds easy to interpret, a controversy sometimes arises when a determination of a party's income is difficult to make. While the legislature somewhat anticipated these issues by adopting this definition, it is necessary to rely on additional provisions in determining the level of income attributed to a party.

Section 78-45-7.5 attempts to clarify how to attribute income to a self-employed parent, but problems frequently arise as to what constitutes "necessary expenses" required to maintain operation of the business. The statute does stress, however, that allowable expenses for tax purposes are not all necessary expenses for operation of the business, so taxable income and income for child support may differ.

Section 78-45-7.5(2) limits income

from earned income sources to the equivalent of one full-time job, although the issue of overtime and when it should be included in a parent's income is a frequent consideration. If income has been subsidized by overtime earnings, and a party's historical earnings would establish a consistently and regularly provided additional income, child support may be based on regular plus overtime wages.

Section 78-45-7.5(7) establishes criteria for imputing income to a non-earning parent, whether that is due to a lack of employment experience, attendance in school, extraordinary needs of a child, or other factors that would interfere with a parent's ability to obtain gainful employment.

Section 78-45-7.5(5)(c) considers the situation of voluntary underemployment or overemployment of a parent and requires the court to use historical earnings in determining present gross income. This issue arises when, for instance, a parent who has had substantial historical earnings, at the time of the divorce, suddenly has nominal or no earnings because of his or her own voluntary choice. See *Hill v. Hill*, 869 P.2d 963 (Utah Ct. App. 1994) (trial court properly imputed income to obligor parent based on historical earnings and current employment options); *Hall v. Hall*, 858 P.2d 1018 (Utah Ct. App. 1993) (trial court properly imputed income at historical earning level). While the statutory language has narrowed the disputes over income determinations, there are still "gray areas" that are frequently litigated by the parties.

### III. Income Tables

The 1994 amendments also increased the income tables of the Guidelines, resulting in support awards approximately 10% to 14% higher. This amendment not only takes into consideration the increased earnings of parents, but also the increased expenses of raising children. Basically, four primary amendments were made to the support tables:

**(A) Lower Income Table.** The original tables started with a combined income of less than \$200 and went up to \$10,000. The Guidelines now provide a separate table for lower income cases, using only the obligor's income to determine the level of child support to be paid.

**(B) Table.** The table for combined incomes now starts at \$650 and, as with

the previous table, goes up to \$10,000. If the combined incomes of the parties exceed the highest level specified in the table, support may be determined by the court on a case-by-case basis, but the amount ordered cannot be less than the highest level specified in the table for the number of children due support. See *Baker v. Baker*, 866 P.2d 540 (Utah Ct. App. 1993) (trial court's award of support in excess of highest level specified in table affirmed.)

**(C) Number of Children.** Research confirmed that, following a divorce, many large families had children that had already reached the age of majority. The new amendments limit the tables for support for up to six children, rather than the previous ten. If there are more than six children still under the age of majority at the time of divorce, the support amount ordered cannot be less than the amount for six children, unless the presumption has been rebutted as provided by Section 78-45-7.2(3). However, the support amount ordered can be a greater amount as determined by the court.

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**(D) Eighteen and Out of High School.** The Guidelines were also amended to provide that the support for a child is to be paid by the obligor parent until the child becomes 18 years of age, "or has graduated from high school during the child's normal and expected year of graduation, whichever occurs later." Utah Code Ann. § 78-45-7.10. This amendment was precipitated by the recent ruling of the Utah Court of Appeals in *Thornblad v. Thornblad*, 849 P.2d 1197 (Utah Ct. App. 1993), which concluded that the pre-amendment statutory provision only required support for children through the age of majority, or 18 years, and that any extension of support beyond the 18th birthday would

require a modification of the original Decree of Divorce.

Notwithstanding these provisions, however, the court continues to have the discretion to extend support beyond these parameters if the child is "incapacitated from earning a living and is without sufficient means." Utah Code Ann. § 78-45-2(4).

### IV. Medical Expenses

The Guidelines initially allowed the non-custodial (obligor) parent to deduct the children's portion of the insurance premium from his or her child support obligation if he or she maintained health insurance for the children. Frequently, the result of this deduction left the custodial parent with little actual support or, if that parent also carried health insurance for the children, no assistance from the obligor for the cost of the premium. The recent amendments correct that disparate treatment and both parents, obligor and obligee, share responsibility for payment of the insurance premium, as well as share the costs of all noncovered reasonable medical expenses of the children, including routine office visits and immunizations.

Section 78-45-7.15 requires the court to order the parent to provide insurance for the medical expenses of the minor children if insurance is available at a reasonable cost. To determine which parent will be required to maintain medical insurance, the court considers four factors: (1) the reasonableness of the cost; (2) the availability of a group insurance policy; (3) the coverage; and (4) the preference of the custodial parent. This last factor takes into consideration the fact that it is usually the custodial parent who assumes responsibility for taking the children to the doctor and filling prescriptions, and he or she should be entitled to voice a preference for coverage.

This section also requires the court to order each parent to equally share the out-of-pocket costs of any premium that is actually paid by a parent for the children's portion of the insurance. For example, if the coverage is offered to a parent at no cost because it is a benefit of employment, then the parent providing the insurance is not entitled to any payment from the other parent. In addition, the obligation is a per-capita share of the insurance premium. In a modification proceeding, for example, if the non-custodial parent carries the insur-

ance for the parties' two children from the previous marriage, and the coverage also includes the present spouse and three stepchildren, the dependent coverage for six is divided between them, and the actual out-of-pocket cost of the premium for the parties' two children is one-third of that cost, split between the two now-divorced parents.

This section also requires the parent who provides coverage to keep the other parent informed as to any changes in the provider coverage, including premium and benefits, within thirty days of such change.

Any noncovered medical expenses, including deductibles and copayments, incurred by a parent for the children shall be shared equally between the parties. The parent who incurs medical expenses is required to provide written verification to the other parent within thirty days of payment. Unlike the previous statute, the amendment allows the court to impose sanctions against a parent who fails to comply with the requirement to provide change of coverage notice, including a denial of the right to receive credit for expenses incurred or recover the other parent's share of the expenses.

Finally, because the premiums for health insurance and even the provider of such insurance are subject to frequent change, these expenses are treated as additions to the base support award, similar to the payment of child care expenses.

#### V. Child Care Expenses

Prior statutory language required the parties to share the reasonable work-related child care expenses incurred by the parents. The amendments require the parents to share the child care expense upon presentation of proof of the expense provided by the parent who incurs the child care expense. This section also requires the parent who arranges for the child care to notify the other parent of any change in the provider or the monthly expense within thirty days, or the court may, as a sanction, deny that parent the right to receive credit for, or payment of, the other parent's share of the expense.

One additional amendment to the payment of child care expenses extends to the non-custodial parent who incurs child care expenses during extended visitation. Prior to section 78-45-7.17(1), the non-custodial parent who incurred child care expenses because of his or her employment during

extended visitation was not entitled to receive reimbursement for that expense from the custodial parent, despite the language that referred simply to "work related child care costs actually incurred on behalf of the dependent children of the parent." Utah Code Ann. §78-45-7.16 The amendment clarifies that the non-custodial parent is entitled to the same reimbursement from the custodial parent for his or her child care expenses incurred while exercising extended visitation with the children.

#### VI. Accountability

One of the most controversial amendments to the Guidelines is Section 78-45-7.20, which authorizes the court, upon the petition of the obligor parent, to order the obligee parent to provide an accounting to the obligor of amounts spent on or for the children. The statute does not specify the frequency or form of the accounting, and it also prohibits the obligor parent from petitioning the court for an accounting if he or she is not current in support payments.

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#### VII. Award of Tax Exemption

Since enactment of the Guidelines in 1989, it has been believed, at least by most practitioners and judges, that the amount of support awarded under the Guidelines presumed that the custodial parent would be entitled to claim the dependency exemption for the minor children. This issue frequently became contested and decisions of the lower courts were appealed to the Utah Court of Appeals. See *Martinez v. Martinez*, 754 P.2d 69 (Utah Ct. App. 1988), *rev'd*, 818 P.2d 538 (Utah 1991) (custodial parent entitled to dependency exemptions for children); *Fullmer v. Fullmer*, 761 P.2d 942 (Utah Ct. App. 1988) (trial court's award of

dependency exemptions to non-custodial parent reversed); *Motes v. Motes*, 786 P.2d 232 (Utah Ct. App. 1989) (trial court properly determined that IRS regulations do not mandate that a state court grant all exemptions to custodial parent); *Hill v. Hill*, 869 P.2d 963 (Utah Ct. App. 1994) (affirming trial court's award of dependency exemptions to custodial parent, with non-custodial parent permitted to purchase right to claim exemptions).

To end this controversy, and to codify the case holdings, the Utah Legislature enacted Section 78-45-7.21 which states:

(1) No presumption exists as to which parent should be awarded the right to claim a child or children as exemptions for federal and state income tax purposes. Unless the parties otherwise stipulate in writing, the court or administrative agency shall award in any final order the exemption on a case-by-case basis.

(2) In awarding the exemption, the court or administrative agency shall consider:

(a) as the primary factor, the relative contribution of each parent to the cost of raising the child; and

(b) among other factors, the relative tax benefit to each parent.

(3) Notwithstanding Subsection (2), the court or administrative agency may not award any exemption to the noncustodial parent if that parent is not current in his child support obligation, in which case the court or administrative agency may award an exemption to the custodial parent.

(4) An exemption may not be awarded to a parent unless the award will result in a tax benefit to that parent.

#### VIII. Modification

The Guidelines provide for a modification in the support level determined before the amendment without a further showing of the required material and substantial change of circumstance if the child support amount calculated in accordance with the Guidelines is 25% greater or less than the amount currently paid. Utah Code Ann. § 78-45-7.2(6).

#### IX. Universal Income Withholding

On January 1, 1994, Universal Income Withholding became effective and these

provisions are codified in Utah Code Ann. § 62A-11-501 et. seq. Pursuant to these requirements, each child support obligation ordered or modified subjects the income of an obligor to immediate income withholding, regardless of whether a delinquency occurs, unless:

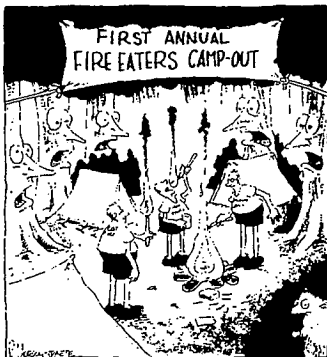
(a) The court finds that one party has demonstrated "good cause" not to require income withholding; or

(b) The parties have entered into an alternative agreement that has been entered in the record by the court.

The statute also requires the parties to submit documentation regarding their employment and other information sufficient to process income withholding in accordance with this chapter.

#### CONCLUSION

Although there are still obvious areas of dispute, the Guidelines have made award amounts of child support much more predictable and consistent throughout the State. The new amendments have made the shared responsibility for health insurance coverage and noncovered expenses more equitable, and the increase in the support levels reflects the increased costs of raising children in the current economy. While Utah child care law has come a long way in ensuring the adequate support of children subsequent to divorce, it continues to remain an important factual and legal issue in every family in which the parents are considering divorce.



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