Chapter 19

Child Support

19-1. Child Support - Presumption that Basic Child Support Obligation is Correct Amount of Support

"Child support" is defined as a sum to be paid pursuant to court order or decree by either or both parents or pursuant to a valid agreement between the parties for care, maintenance and education of any unemancipated child under the age of twenty-one years.[1]

Domestic Relations Law §240(1-b) and Family Court Act §413(1)(a), commonly referred to as the Child Support Standards Act ("CSSA"), require the Court to award, as child support, the sum of the "Basic Child Support Obligation" [2] that is calculated from the application of the child support formula, unless the Court finds that a variation of the support amount is necessary because the non-custodial parent's share of the basic child support obligation is unjust or inappropriate. There is a presumption that the "basic child support obligation" is the correct amount of support.[3]

This requires the Court to calculate the "basic child support obligation". It is defined in Domestic Relations Law §240(1-b)(b)(1) to "mean the sum derived by adding the amounts determined by the application of Subparagraphs Two and Three of Paragraph (c) of this Subdivision except as increased pursuant to Subparagraphs Four, Five, Six and Seven of such Paragraph."[4]

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1 Domestic Relations Law §240(1-b) (b) (2); Family Court Act §413 (1) (b) (2). See Volume 4A, Chapter 2, Law and the Family New York, 2d Edition Revised, for a comprehensive discussion of child support awards.

2 Family Court Act §413(1)(b)(1) and Domestic Relations Law §240(1-b)(b)(1) define this as the sum derived by adding the amounts determined by the application of Family Court Act §413(1)(c)(2) and (3) and Domestic Relations Law §240(1-b)(c)(2) and (c)(3), except as increased pursuant to Family Court Act §413(1)(c)(4)–-(7) and Domestic Relations Law §240(1-b)(c)(4)–-(7).

3 See Cassano v. Cassano, 85 NY2d 649, 628 NYS2d 10 (1995).

In Simmons v Williams, AD2d , 689 NYS2d 570 (2d Dept., 1998) the second department held that the CSSA creates a rebuttable presumption that child support has been correctly determined. The presumption may be rebutted if the court finds that application of the statutory support formula would be unjust or inappropriate.

In Matter of Steuben County Dept. of Social Services, 171 AD2d 1023, 569 NYS2d 32 (4th Dept., 1998) the court held that there is a presumption that the standard of support calculated pursuant to the formula "is reasonable and appropriate".

4 Domestic Relations Law §240(1-b) (b) (1). Family Court Act §413 (1) (b) (1).

In calculating the "basic child support obligation", the Court must first determine the "combined parental income" of the parents. This is the sum of their incomes, [5] as income is defined in the statute.[6]

The Court must then multiply the "combined parental income" up to the amount set forth in Social Services Law § 111-i (b) (2) ('the statutory cap") [7] by the appropriate "child support percentage".

The "child support percentage" is 17 percent for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and no less than 35 percent for five or more children.[8] Where there are five or more children, the court must exercise its discretion as to the amount of the child support percentage.[9]

Domestic Relations Law §240(1-b) (c) (2) provides that the statutory cap on the:

combined parental income is up to the amount set forth in Social Services Law § 111-i (b) (2). The current statutory cap on the "combined parental income" is $143,000. [10]

For purposes of child support awards the original "combined parental income" amount, (statutory cap) which was multiplied by the child support percentage, was $80,000.[11] Domestic Relations Law §240[1-b] [c] [2] originally provided that: The court shall multiply the combined parental income up $80,000 by the appropriate child support percentage and such amount shall be prorated in the same proportion as each parent's income is to the combined parental income.

In 2009 the statutory cap on the "combined parental income" of $80,000 was deleted from Domestic Relations Law §240 [1-b] [c] [2] and Family Court Act §413 91)(c)(2) and the method of determining that amount, which was increased to $130,000 effective January 31, 2010, was set forth in Social Services Law 111-i.[12] Domestic Relations Law §240[1-b] [c] [2] was amended to provide that: "The court shall multiply the combined parental income up to the amount set forth in paragraph (b) of subdivision two of section one hundred eleven-i of the social services law by the appropriate child support percentage and such amount shall be prorated in the same proportion as each parent's income is to the combined parental income. [13]

Social Services Law 111-i (2) (b) was amended in 2009 to provide that the combined parental income amount to be reported in the child support standards chart and utilized in calculating orders of child support in accordance with Family Court Act §413 [1] [c] [2] and Domestic Relations Law §240[1-b] [c] [2] shall be $130,000 effective January 31, 2010. [14] However, beginning January 31, 2012 and every two years thereafter, the combined parental income amount will increase by the product of the average annual percentage changes in the consumer price index

5 Family Court Act §413(1) (b) (4); Family Court Act §413(1) (c) (1); Domestic Relations Law §240(1-b) (b) (4); Domestic Relations Law §240(1-b) (c) (1).

6 Income is defined in Family Court Act §413(1) (b) 5); Domestic Relations Law §240(1-b) (b) (5)

7 Family Court Act §413(1) (c) (2); Domestic Relations Law §240(1-b) (c) (2).

8 Family Court Act §413(1) (b) (3); Domestic Relations Law §240(1-b) (b) (3).

9 Domestic Relations Law §240(1-b) (1) (b) (3).

10 See https://www.childsupport.ny.gov/child_support_standards.html (last accessed June 1, 2017) for the current amount of the statutory cap on the "combined parental income", the self-support reserve and the poverty income guidelines amount.

11 Domestic Relations Law §240 [1-b] [c] [2], Laws of 1980, Ch 281, effective July 19, 1980.

12 Laws of 2009, Ch.343

13 Domestic Relations Law §240[1-b] [c] [2]; Laws of 2009, Ch 343. See also Family Court Act §413 (c) (2) which contains an identical provision.

14 Laws of 2009, Ch.343, effective as provided in §8.

for all urban consumers (CPIU) as published by the United States department of labor bureau of labor statistics for the two year period rounded to the nearest one thousand dollars.[15]

As a result of the 2009 amendment the statutory cap was increased to $136,000 as of January 31, 2012.[16]

The 2009 amendment provided that the Social Services commissioner is required to the child support standards chart[17] on an annual basis by April first of each year and in no event later than forty-five days following publication of the annual poverty income guideline for a single person as reported by the federal department of health and human services. [18] The child support standards chart must include: (i) the revised poverty income guideline for a single person as reported by the federal department of health and human services; (ii) the revised self-support reserved as defined in Domestic Relations Law §240; (iii) the dollar amounts yielded through application of the child support percentage as defined in Domestic Relations Law §240 and Family Court Act § 413; and (iv) the combined parental income amount.[19]

Social Services Law § 111-i, subdivision 2 (b) was amended in 2014[20] [21] to provide that the combined parental income amount to be reported in the child support standards chart and utilized in calculating orders of child support in accordance with Family Court Act §413 [1] [c] [2] and Domestic Relations Law §240[1-b] [c] [2] as of January 31, 2014 shall be $141,000. [22] However, beginning March 1, 2016 and every two years thereafter, the combined parental income amount will increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the current combined parental income amount and then rounded to the nearest one thousand dollars.[23]

As of March 31, 2017 the combined parental income amount or statutory cap was $143,000. [24]

The amount arrived at by multiplying the "combined parental income" up to the amount set forth in Social Services Law § 111-i (b) (2) ('the statutory cap") [25] by the appropriate "child support percentage" must then be prorated in the same proportion as each parent's income is to the "combined parental income." [26]

Where the combined parental income exceeds the statutory cap, which is the dollar amount set forth in set forth in Social Services Law § 111-i (b) (2), the court must determine the amount of child support for the amount

15 Laws of 2009, Ch.343, effective as provided in §8.

16 Laws of 2009, Ch.343

17 The Child Support Standards Chart may be downloaded from https://www.childsupport.ny.gov/dcse/pdfs/CSSA.pdf (last accessed March 31, 2017)

18 Social Services Law § 111-i, subdivision 2 (c), Laws of 2009, Ch. 343

19 Social Services Law § 111-i, subdivision 2 (a), Laws of 2009, Ch. 343

20 Laws of 2014, Ch 466; Laws of 2015, Ch. 347, § 1, effective December 24, 2015

21 Laws of 2014, Ch 466; Laws of 2015, Ch. 347, § 1, effective December 24, 2015

22 Social Services Law § 111-i, subdivision 2 (b), Laws of 2014, Ch 466; Laws of 2015, Ch. 347, § 1, effective December 24, 2015

23 Social Services Law § 111-i, subdivision 2 (b) as amended by Laws of 2015, ch 347

24 The combined parental income amount, the Self-Support Reserve and the Poverty Income Guidelines Amount may be ascertained from the New York State, Division of Child Support Enforcement website at https://www.childsupport.ny.gov/child_support_standards.html

(Last accessed March 31, 2017).

25 Family Court Act §413(1) (c) (2); Domestic Relations Law §240(1-b) (c) (2).

26 Family Court Act §413(1) (c) (2); Domestic Relations Law §240(1-b) (c) (2).

of the combined parental income in excess of the statutory cap through consideration of the factors set forth in Domestic Relations Law §240(1-b), paragraph (f) [27]and/or the child support percentage.[28]

The "paragraph (f)" factors are:

(1). The financial resources of the custodial and non-custodial parent, and those of the child;

(2). The physical and emotional health of the child, and his/her special needs and aptitudes;

(3). The standard of living the child would have enjoyed had the marriage or household not been dissolved;

(4). The tax consequences to the parties;

(5). The non-monetary contributions that the parents will make toward the care and well-being of the child;

(6). The educational needs of either parent;

(7). A determination that the gross income of one parent is substantially less than the other parent's gross income;

(8). The needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the action and whose support has not been deducted from income and the financial resources of any person obligated to support such children. This factor may only apply, however, if the resources available to support such children are less than the resources available to support the children who are subject to the action;

(9). Provided that the child is not on public assistance (i) extraordinary expenses incurred by the non-custodial parent is exercising visitation; or (ii) expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent's expenses are substantially reduced as a result thereof; and

(10). Any other factors that the court determines are relevant in each case. The court may not make such a finding on the basis that the non-custodial parents' share exceeds the portion of public assistance grant which is attributable to a child or children. [29]

Where the custodial parent is working or receiving elementary or secondary education, or higher education or vocational training which will lead to employment, and incurs child care expenses as a result, the court must determine reasonable child care expenses, and prorate the reasonable child care expense in the same proportion as each parent's income is to the "combined parental income." Each parent's pro rata share of the child care expenses must be separately stated and added to the amount previously calculated.[30]

In addition, the Court must determine the parties' obligation to provide health insurance benefits and to pay cash medical support. [31] Domestic Relations Law §240 (1-b) (c) (5) requires the court to determine the parties'

27 Family Court Act §413(1) (f); Domestic Relations Law §240(1-b) (f).

28 Family Court Act §413(1) (c) (3); Domestic Relations Law §240(1-b) (c) (3).

29 Family Court Act §413(1) (b) (f); Domestic Relations Law §240(1-b) (b) (f).

30 Domestic Relations Law §240(1-b) (c) (4); Family Court Act §413(1) (c) (4).

31 Domestic Relations Law §240(1-b) (c) (5); Family Court Act §413(1) (c) (5).

obligation to provide health insurance benefits pursuant to Domestic Relations Law §240, and to pay cash medical support as provided under Domestic Relations Law §240 (1-b) (c) (5). [32]

Health insurance benefits and the availability of health insurance benefits are determined pursuant to the provisions of Domestic Relations Law §240, subdivision 1, paragraph (c). **"**Available health insurance benefits**"** means any health insurance benefits that are reasonable in cost and that are reasonably accessible to the person on whose behalf the petition is brought. Health insurance benefits that are not reasonable in cost or whose services are not reasonably accessible to such person are to be considered unavailable.[33]

Cash medical support**"** means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by a parent through an employer or organization, including employers or organizations which are self insured, or through other available health insurance or health care coverage plans, and/or for other health care expenses not covered by insurance.[34]

Where health insurance benefits pursuant to Domestic Relations Law §240, subdivision 1, paragraph (c), subparagraph 2, clauses (i) and (ii) are determined by the court to be available, the cost of providing health insurance benefits must be prorated between the parties in the same proportion as each parent's income is to the combined parental income. If the custodial parent is ordered to provide such benefits, the non-custodial parent's pro rata share of such costs must be added to the basic support obligation. If the non-custodial parent is ordered to provide such benefits, the custodial parent's pro rata share of such costs must be deducted from the basic support obligation.[35]

Where health insurance benefits are determined by the court to be unavailable the court must order the non-custodial parent to pay cash medical support. [36]

Where health insurance benefits are determined by the court to be unavailable, and the child or children are determined eligible for coverage under the state's child health insurance plan the court shall prorate each parent's share of the cost of the family contribution required under such child health insurance plan in the same proportion as each parent's income is to the combined parental income, and state the amount of the non-custodial parent's share in the order. The total amount of cash medical support that the non-custodial parent is ordered to pay under this clause may not exceed five percent of his or her gross income, or the difference between the non-custodial parent's income and the self-support reserve, whichever is less.[37]

In addition to the amounts ordered under Domestic Relations Law §240 (1-b), (c) (5) clause (ii), (iii), or (iv), the court must pro rate each parent's share of reasonable health care expenses not reimbursed or paid by insurance,

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32 Domestic Relations Law §240 (1-b), (c) (5), Laws of 2009, Ch 215 §2; Family Court Act §413, subdivision 1 (c) (5)), Laws of 2009, Ch 215 §1. See Domestic Relations Law §240, subdivision 1, which deals with the parties' obligation to provide health insurance benefits.

33 Domestic Relations Law 240, subdivision 1 (b) (2) as added by Laws of 2009, Ch 215, §4. See also Family Court Act 416 (d) (2) as added by Laws of 2009, Ch 215, §3.

34 Domestic Relations Law §240 (1-b), (c) (5), Laws of 2009, Ch 215 §2; Family Court Act §413, subdivision 1 (c), (5)), Laws of 2009, Ch 215 §1).

35 Domestic Relations Law §240 (1-b) (c) (5) (ii); Family Court Act §413, subdivision 1 (c) (5) (ii).

36 Domestic Relations Law §240 (1-b) (c) (5) (iii); Family Court Act §413, subdivision 1 (c) (5) (iii).

37 Domestic Relations Law §240 (1-b) (c) (5) (iv); Family Court Act §413, subdivision 1 (c) (5) (iv).

the medical assistance program, or the state's child health insurance plan, in the same proportion as each parent's income is to the combined parental income, and state the non-custodial parent's share as a percentage in the order. The non-custodial parent's pro rata share of such health care expenses determined by the court to be due and owing shall be support arrears/past due support and shall be subject to any remedies provided by law for the enforcement of support arrears/past due support. In addition, the court may direct that the non-custodial parent's pro rata share of such health care expenses be paid in one sum or in periodic sums, including direct payment to the health care provider.[38]

In addition to the amounts ordered under Domestic Relations Law §240 (1-b), (c) (5) clause (ii), (iii), or (iv), the court must pro rate each parent's share of reasonable health care expenses not reimbursed or paid by insurance, the medical assistance program established pursuant to title eleven of article five of the social services law, or the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law, in the same proportion as each parent's income is to the combined parental income, and state the non-custodial parent's share as a percentage in the order. The non-custodial parent's pro rata share of such health care expenses which is determined by the court to be due and owing is "support arrears/past due support" and is subject to any remedies provided by law for the enforcement of "support arrears/past due support".[39] In addition, the court may direct that the non-custodial parent's pro rata share of such health care expenses be paid in one sum or in periodic sums, including direct payment to the health care provider.[40]

Where it is established by either party that cash medical support pursuant to Domestic Relations Law §240 (1-b), (c) (5) clause (ii), (iii), (iv), or (v) would be unjust or inappropriate after consideration of the ten factors in Domestic Relations Law §240 (1-b) (f), the court must order the parties to pay cash medical support as the court finds just and appropriate, considering the best interests of the child; and set forth in the order the factors it considered, the amount calculated under this subparagraph, the reason or reasons the court did not order such amount, and the basis for the amount awarded.[41]

Where the Court determines that the custodial parent is "seeking work" and incurs child care expenses as a result, it may determine reasonable child care expenses and apportion them between the custodial and non-custodial parent. The non-custodial parents share of such expenses must be separately stated, and paid in the manner directed by the Court. This provision is discretionary.[42]

Where the court determines that the present or future provision of post-secondary, private, special, or enriched education for the child is appropriate, the court may award educational expenses. The non-custodial parent must pay educational expenses, as awarded, in the manner determined by the court, including direct payment to the educational provider. This provision is discretionary and it is only applicable to the non-custodial parent...[43]

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38 Domestic Relations Law §240 (1-b) (c) (5) (v); Family Court Act §413, subdivision 1 (c) (5) (v).

39 Domestic Relations Law §240 (1-b), (c) (5), Laws of 2009, Ch 215 §2; Family Court Act §413, subdivision 1 (c) (5)), Laws of 2009, Ch 215 §1.

40 Domestic Relations Law §240 (1-b) (c) (5) (v); Family Court Act §413, subdivision 1 (c) (5) (v).

41 Domestic Relations Law §240 (1-b) (c) (5) (vi); Family Court Act §413, subdivision 1 (c) (5) (vi).

42 Domestic Relations Law §240(1-b) (c) (6); Family Court Act §413(1) (c) (6).

43 Domestic Relations Law §240(1-b) (c) (7); Family Court Act §413(1) (c) (7).

Notwithstanding the provisions of paragraph (c) [44] if the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount for a single person as reported by the Federal Department of Health and Human Services, the basic child support obligation must be $25 a month. However, if the court finds that such basic child support obligation is unjust or inappropriate, based upon considerations of the factors set forth in paragraph (f), the court must order the non-custodial parent to pay such amount of the child support as the court finds just and appropriate. [45]

Notwithstanding the provisions of paragraph (c) [46] where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the self-support reserve, but not below the poverty income guidelines amount for a single person, the basic child support obligation must be $50 a month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater.[47] This amount is in addition to any amounts that the court may, in its discretion, order in accordance with subparagraphs four, five, six and/or seven of paragraph (c) which are discussed above. [48]

Where a parent is or may be entitled to receive non-recurring payments from extraordinary sources not otherwise considered as income pursuant to Domestic Relations Law §240(1-b)(e) including but not limited to: (1) Life insurance policies; (2) Discharges of indebtedness; (3) Recovery of bad debts and delinquency amounts; (4) Gifts and inheritances; and (5) Lottery winnings, the court may allocate a proportion of such income to child support, and direct that the amount allocated be paid in a manner determined by the court." [49]

The Court must then calculate the basic child support obligation and the non-custodial parents share of the basic child support obligation, and order the non-custodial parent to pay his or her share of the basic child support obligation, and an amount of the non-recurring payments from extraordinary sources not otherwise considered as income pursuant to Domestic Relations Law §240(1-b)(e), if any, unless it finds that the non-custodial parents share of the basic child support obligation is "unjust or inappropriate" based on a consideration of the "paragraph (f)" factors. Those factors are:

(1). The financial resources of the custodial and non-custodial parent, and those of the child;

(2). The physical and emotional health of the child, and his/her special needs and aptitudes;

(3). The standard of living the child would have enjoyed had the marriage or household not been dissolved;

(4). The tax consequences to the parties;

(5). The non-monetary contributions that the parents will make toward the care and well-being of the child;

(6). The educational needs of either parent;

(7). A determination that the gross income of one parent is substantially less than the other parent's gross income;

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44 Family Court Act §413(1) (c); Domestic Relations Law §240(1-b) (c).
45 Family Court Act §413(1) (d); Domestic Relations Law §240(1-b) (d).
46 Family Court Act §413(1) (c); Domestic Relations Law §240(1-b) (c).
47 Family Court Act §413(1) (d); Domestic Relations Law §240(1-b) (d).
48 Family Court Act §413(1) (d); Domestic Relations Law §240(1-b) (d).
49 Domestic Relations Law §240(1-b) (e); Family Court Act §413(1) (e).

(8). The needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the action and whose support has not been deducted from income and the financial resources of any person obligated to support such children. This factor may only apply, however, if the resources available to support such children are less than the resources available to support the children who are subject to the action;

(9). Provided that the child is not on public assistance (i) extraordinary expenses incurred by the non-custodial parent is exercising visitation; or (ii) expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent's expenses are substantially reduced as a result thereof; and

(10). Any other factors that the court determines are relevant in each case. The court may not make such a finding on the basis that the non-custodial parents' share exceeds the portion of public assistance grant which is attributable to a child or children.[50]

Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court must order the non-custodial parent to pay such amount of child support as it finds just and appropriate,. The court must set forth, in a written order, the factors it considered; the amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child support obligation. This written order may not be waived by either party or counsel. [51]

However, notwithstanding any other provision of law, the court may not find that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate on the basis that such share exceeds the portion of a public assistance grant which is attributable to a child or children. [52]

Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person, unpaid child support arrears will not accrue beyond $500. [53]

19-2. Definition of Income - Determine Combined Parental Income

In applying the formula to determine the amount of child support, the Court is required to first determine the "Combined Parental Income" of both parents. The "combined parental income" is the sum of the parents "incomes".[54]

19-3. Definition of Income - Income Defined

"Income" is defined in Domestic Relations Law §240(1-b)(b)(5), as including, but not limited to, the amounts determined by the application of clauses (i) to (vi), as reduced by the application of clause (vii). In order to understand exactly this means and what is included in "income", each clause must be examined individually.

Under the Child Support Standards Act, "income" is defined as, but not limited to, "gross (total) income as should have been or should be reported in the most recent federal income tax return". [55]

50 Family Court Act §413(1) (b) (f); Domestic Relations Law §240(1-b) (b) (f).

51 Family Court Act §413(1) (g); Domestic Relations Law §240(1-b) (g).

52 Family Court Act §413(1) (g); Domestic Relations Law §240(1-b) (g).

53 Family Court Act §413(1) (g); Domestic Relations Law §240(1-b) (g).

54 Domestic Relations Law §240(1-b) (b) (5).

55 Family Court Act §413(1) (b) (5); Domestic Relations Law §240(1-b) (b) (5).

Gross income is defined in Section 61(a) of the Internal Revenue Code which provides:

(a) General Definition.--Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

(2) Gross income derived from business;

(3) Gains derived from dealings in property;

(4) Interest;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Alimony and separate maintenance payments;

(9) Annuities;

(10) Income from life insurance and endowment contracts;

(11) Pensions;

(12) Income from discharge of indebtedness;

(13) Distributive share of partnership gross income;

(14) Income in respect of a decedent; and

(15) Income from an interest in an estate of trust.

If a person files his or her federal income tax return as a married person filing jointly, he or she must prepare a form, sworn to under penalty of law, disclosing his or her gross income individually.[56] This provision applies in all cases where the parties have filed joint federal income tax returns. It requires that each spouse prepare a form disclosing his or her gross income as if he or she were filing an individual federal income tax return. This is not a simple endeavor where the parties own certain income-producing assets as joint tenants, as questions may arise as to who is required to report the income on his or her income tax return. Where income-producing assets are subject to equitable distribution in the divorce action, it would seem that the court could resolve this issue by determining child support subsequent to a determination of the property rights of the parties, and after distributing their marital property.

In the event that a federal income tax return has not been filed for the last calendar year, the parties are required by the words "should be reported" to prepare such a form. In the event that a party has obtained an extension to file an income tax return for the last calendar year, he or she cannot avoid the statutory mandate by claiming that he has not filed a return or that his most recent federal income tax return is several years old.

56 Family Court Act §413(1)(b)(5)(i); Domestic Relations Law §240(1-b)(b)(5)(i).

It has been held that the court is required to consider the parties latest income tax returns in determining the child support award.[57]

The law [58] specifies that "income" is "not limited to, gross (total) income as should have been or should be reported in the most recent federal income tax return." [59] It has been held that the court may consider income information from a year-end pay stub.[60]

The court is permitted to consider current income figures for the tax year not yet completed. [61]

Many of the child support cases where the court has determined the income of the parties do not comply with the rule that the court is required to consider the parties latest income tax returns in determining the child support award. These are cases where the court has imputed or attributed income to a party. The court is not required to rely upon a party's account of his own finances where that party's account of his or her finances is not credible, and may impute income to him based upon, among other things, his ability to earn a living, education, skills, past earnings and future earning capacity. [62]

The court may properly consider income listed by a party on a net worth statement where a party repeatedly fails to provide current financial information.[63]

It has been held that the statute does not permit the court to determine a party's income for child support purposes by excluding actual overtime wages or by averaging a party's earnings over several years.[64] It has also been held that a court is not required to rely upon a party's own account of his or her finances and may impute income based upon that party's past income or demonstrated earning potential, using an average of projected earnings.[65]

Although a Court may require that the income and/or expenses of either party be verified with documentation, this authority is discretionary and the Court does not have the obligation to investigate the accuracy of a party's financial affidavit, nor question him or her regarding his income and assets or as to the veracity of her financial affidavit. [66]

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57 Healy v. Healy, 51 A.D.3d 551, 859 N.Y.S.2d 51 (1st Dep't 2008); Miller v. Miller, 18 A.D.3d 629, 631, 796 N.Y.S.2d 97 (2d Dept 2005).

58 Family Court Act §413(1) (b) (5); Domestic Relations Law §240(1-b) (b) (5).

59 Bains v. Bains, 308 A.D.2d 557, 764 N.Y.S.2d 721 (2d Dep't 2003)

60 Matter of Thomson-Fleming v Fleming, 128 A.D.3d 708, 7 N.Y.S.3d 603 (2 Dept.,2015) (pay stub)

61 Monroe County Dept. of Social Services v. Mercado, 241 A.D.2d 948, 661 N.Y.S.2d 323 (4th Dep't 1997) (partial information for the tax year not yet completed); Kellogg v. Kellogg, 300 A.D.2d 996, 752 N.Y.S.2d 462 (4th Dep't 2002) (current figures for a tax year not yet completed); Moran v. Grillo, 44 A.D.3d 859, 843 N.Y.S.2d 674 (2d Dep't 2007) (current income figures for tax year not yet completed); Taraskas v. Rizzuto, 38 A.D.3d 910, 835 N.Y.S.2d 212 (2d Dep't 2007) (current income figures for tax year not yet completed) (overtime earnings); Murray v. Murray, 101 A.D.3d 1320, 956 N.Y.S.2d 252 (3d Dep't 2012) (prior years income).

62 See discussion of imputed income, infra.

63 In Abramovitz v. Bercovici, 278 A.D.2d 175, 718 N.Y.S.2d 64 (1st Dep't 2000), the Appellate Division held that the trial court properly calculated plaintiff's child support obligation based on defendant's income as shown in her net worth statement submitted seven years earlier on her motion for pendente lite relief, where she repeatedly failed to produce the current financial information necessary to make the calculation.

64 Wallach v. Wallach, 37 A.D.3d 707, 831 N.Y.S.2d 210 (2d Dep't 2007) (excluding actual overtime wages) (averaging earnings over several years) (maintenance payments)

65 Culhane v. Holt, 28 A.D.3d 251, 813 N.Y.S.2d 400 (1st Dep't 2006) (average of projected earnings)

66 Hitlin v. Towers, 175 A.D.2d 382, 572 N.Y.S.2d 453 (3d Dep't 1991).

In Matter of Graby v. Graby,[67] the Court of Appeals concluded that "under the precise guidelines of Family Court Act §413", Social Security disability benefits paid to the parties' children on the basis of the non-custodial parent's disability should not be included as income of that parent or credited towards the support obligation. Those benefit payments are more properly characterized as resources of the child to be considered in determining whether the support obligation is unjust or inappropriate.

19-4. Definition of Income - Investment income

In addition, "income" also includes investment income reduced by sums expended in connection with such investment, to the extent not already included in gross income. [68]

19-5. Definition of Income – Income from Other Sources and Voluntarily Deferred Income

In addition, the Domestic Relations Law provides that `"income" includes the amount of income or compensation voluntarily deferred and income received, if any, from the following sources:

(A) workers' compensation,

(B) disability benefits,

(C) unemployment insurance benefits,

(D) social security benefits,

(E) veterans benefits,

(F) pensions and retirement benefits,

(G) fellowships and stipends, and

(H) annuity payments, to the extent not already included in gross income.

(I) alimony or maintenance actually paid or to be paid to a spouse who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse. However, the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with Domestic Relations Law §236[B][9][b][2]. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of subdivision (I), the provisions of this subdivision (I) shall not, by themselves, constitute a substantial change of circumstances pursuant to Domestic Relations Law §236[B][9][b]. [69]

19-6. Definition of Income - "Imputed income"

The Domestic Relations Law provides that in awarding child support, the Court, in the exercise of its discretion, may attribute or impute income to either parent from any resources as may be available to the parent,

67 Graby v Graby (1994, 4th Dept) 196 AD2d 128, 607 NYS2d 988, app gr, ques certified (4th Dept) 210 AD2d 1014, 621 NYS2d 981 and revd 87 NY2d 605, 641 NYS2d 577, 664 NE2d 488, reh den 88 NY2d 875, 645 NYS2d 449, 668 NE2d 420.

68 Domestic Relations Law §240(1-b) (b) (5) (ii).

69 Domestic Relations Law §240(1-b) (b) (5) (iii). Subdivision (I) became effective January 24, 2016.

including, but not limited to: non-income-producing assets; [70] meals, lodging, memberships, automobiles, or other perquisites that are provided as part of compensation for employment to the extent that such perquisites constitute expenditures for personal use or which expenditures directly or indirectly confer personal economic benefits; fringe benefits provided as part of compensation for employment; and money, goods, or services provided by relatives and friends; [71] and based on the parent's former resources or income, if the Court determines that a parent has intentionally reduced resources or income in order to reduce or avoid the parent's obligation for child support.[72]

New York policy regarding child support is that it is determined by the parents' ability to provide for their child rather than their current economic situation. [73] A court need not rely upon a party's own account of his or her finances, [74] but may impute income based, upon, among other things, the party's past income or demonstrated future potential earnings, [75] the party's employment history, what he or she is capable of earning, [76] and his or her educational background.[77]

A court is not required to find that a parent deliberately reduced his or her income to avoid a child support obligation before imputing income to that parent. [78] A court may properly find a true or potential income higher than that claimed by a parent where that party's account of his or her finances is not credible.[79] Where a party's account of his finances is not credible, the court may impute an income higher than claimed by that party.[80]

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70 Domestic Relations Law §240(1-b) (b) (5) (IV) (A).

71 Id.; See Tesler v. Tesler, 228 A.D.2d 491, 644 N.Y.S.2d 316 (2d Dept. 1996).

72 Domestic Relations Law §240(1-b) (b) (5) (iv). See Darling v. Darling, 220 A.D.2d 858, 632 N.Y.S.2d 252 (3d Dep't 1995).

73 Kalish v. Kalish, 289 A.D.2d 202, 733 N.Y.S.2d 717 (2d Dep't 2001); Goddard v. Goddard, 256 A.D.2d 545, 682 N.Y.S.2d 423 (2d Dep't 1998)

74 See Khaimova v. Mosheyev, 57 A.D.3d 737, 871 N.Y.S.2d 212; Ivani v. Ivani, 303 A.D.2d 639, 757 N.Y.S.2d 89); DeSouza-Brown v. Brown, 71 A.D.3d 946, 947, 897 N.Y.S.2d 228, 231 (2d Dept., 2010).

75 See Brown v. Brown, 239 A.D.2d 535, 657 N.Y.S.2d 764

76 Lago v. Adrion, 93 A.D.3d 697, 940 N.Y.S.2d 287 (2d Dep't 2012), leave to appeal denied, 19 N.Y.3d 812, 951 N.Y.S.2d 722, 976 N.E.2d 251 (2012)

77 See Matter of Collins v. Collins, 241 A.D.2d 725, 727, 659 N.Y.S.2d 955 (actual earning capacity);

Barnaby v. Barnaby, 259 A.D.2d 870, 686 N.Y.S.2d 230 (3d Dep't 1999) (qualifications and experience); Goddard v. Goddard, 256 A.D.2d 545, 682 N.Y.S.2d 423 (2d Dep't 1998) (qualifications and experience); Kosovsky v. Zahl, 257 A.D.2d 522, 684 N.Y.S.2d 524 (1st Dep't 1999) (actual earnings history); Spreitzer v. Spreitzer, 40 A.D.3d 840, 837 N.Y.S.2d 658 (2d Dep't 2007) (earning potential exceeded actual income);Rohme v. Burns, 92 A.D.3d 946, 939 N.Y.S.2d 532 (2d Dep't 2012) (educational background, lack of credibility, monthly expenses, and resources available); Belkhir v. Amrane-Belkhir, 118 A.D.3d 1396, 988 N.Y.S.2d 746 (4th Dep't 2014) (education, experience and earning history); Dougherty v Dougherty, 131 A.D.3d 916, 16 N.Y.S.3d 251 (2d Dept., 2015) (education and experience, and admission); Huddleston v. Rufrano, 98 A.D.3d 1046, 951 N.Y.S.2d 179 (2d Dep't 2012) (lack of credibility and the amount of his past earnings).

In Murphy-Artale v. Artale, 219 A.D.2d 587, 632 N.Y.S.2d 19 (2d Dep't 1995), the Appellate Division reversed on the law an order which awarded the wife child support. It held that there was no basis for the Court's departure from the formula set forth in Domestic Relations Law §240(1-b). As the husband's 1992 reported income was found not to be credible, the court was not bound by the actual reported income in applying the formula and should have used the husband's actual earning capacity, as determined, for example, by averaging his reported income for the 5 years immediately preceding 1992.

78 Sharlow v. Sharlow, 77 A.D.3d 1430, 908 N.Y.S.2d 287 (4th Dep't 2010)

79 Sharlow v. Sharlow, 77 A.D.3d 1430, 908 N.Y.S.2d 287 (4th Dep't 2010)

80 See Lilikakis v. Lilikakis, 308 A.D.2d 435, 436, 764 N.Y.S.2d 206); Rohme v. Burns, 79 A.D.3d 756, 757, 912 N.Y.S.2d 652, 653–54 (2d Dept., 2010).

Trial courts are afforded considerable discretion in determining whether to impute income to a parent. [81] Courts have imputed income based upon financial disclosure affidavit discrepancies,[82] a party's receipt of cash payments,[83] attempts to hide income,[84] a party's failure to provide the documentation required by the Uniform Rules for Trial Courts (22 NYCRR §202.16(k)),[85] discrepancies in the documentation submitted to the court, [86] where personal expenses are claimed as business expenses by a party or paid for out of a party's business account,[87] and income from various sources. [88]

The determination to impute income to a party may be based upon consideration of the prevailing market conditions and prevailing salaries paid to individuals with the party's credentials in his or her chosen field. [89] The court may impute income from any source that is not reported on an income tax return.[90] Courts have based the amount of income imputed to a party upon the income of the party's business or corporation, [91] upon the minimum

81 Rosenberg v. Rosenberg, 44 A.D.3d 1022, 1025, 845 N.Y.S.2d 371; Watson v. Maragh, No. 2015-11208, 2017 WL 424499, at *1 (N.Y. App. Div. Feb. 1, 2017).

82 DeSouza-Brown v. Brown, 71 A.D.3d 946, 897 N.Y.S.2d 228 (2d Dep't 2010) (expenses listed in Statement of Net Worth exceeded income as reported); Oshodi v. Olouwo, 94 A.D.3d 896, 941 N.Y.S.2d 858 (2d Dep't 2012) (statements in the father's financial disclosure affidavit); McElhaney v. Okebiyi, 103 A.D.3d 544, 962 N.Y.S.2d 56 (1st Dep't 2013) (financial disclosure affidavit discrepancies); Safran v. Nau, 123 A.D.3d 460, 999 N.Y.S.2d 4 (1st Dep't 2014) (Financial disclosure affidavit).

83 Andre v. Brumaire, 299 A.D.2d 355, 750 N.Y.S.2d 314 (2d Dep't 2002) (receipt of cash payments)

84 Gleicher v. Gleicher, 303 A.D.2d 549, 756 N.Y.S.2d 624 (2d Dep't 2003) (attempt to hide income); Santana v. Santana, 51 A.D.3d 542, 859 N.Y.S.2d 49 (1st Dep't 2008) (average of annual deposits into personal checking account).

85 LeCrichia v. LeCrichia, 82 A.D.3d 599, 920 N.Y.S.2d 40 (1st Dep't 2011), (failure to provide required documentation of current income)

86 Khaimova v. Mosheyev, 57 A.D.3d 737, 871 N.Y.S.2d 212 (2d Dep't 2008) (financial documentation and expenses in excess of purported income); Barnett v. Ruotolo, 49 A.D.3d 640, 854 N.Y.S.2d 155 (2d Dep't 2008) (financial documentation); Bibicoff v. Orfanakis, 48 A.D.3d 680, 852 N.Y.S.2d 324 (2d Dep't 2008) (income tax return) ; Sena v. Sena, 65 A.D.3d 1244, 885 N.Y.S.2d 738 (2d Dep't 2009) (gross business income as reported on federal income tax return); Armstrong v. Armstrong, 72 A.D.3d 1409, 900 N.Y.S.2d 476 (3d Dep't 2010) (most recent net worth statement).

87 Moran v. Grillo, 44 A.D.3d 859, 843 N.Y.S.2d 674 (2d Dep't 2007) (personal expenses claimed as business expenses); Pulver v. Pulver, 40 A.D.3d 1315, 837 N.Y.S.2d 369 (3d Dep't 2007); (personal expenses claimed as business expenses); Rubley v. Longworth, 35 A.D.3d 1129, 825 N.Y.S.2d 839 (3d Dep't 2006), (personal expenses claimed as business expenses); Beroza v. Hendler, 71 A.D.3d 615, 896 N.Y.S.2d 144 (2d Dep't 2010) (personal expenses claimed as business expenses) ; Brevilus v. Brevilus, 72 A.D.3d 999, 900 N.Y.S.2d 114 (2d Dep't 2010) (unreported annual income) ; Wesche v. Wesche, 77 A.D.3d 921, 909 N.Y.S.2d 764 (2d Dep't 2010) (personal expenses claimed as business expenses).

88 Costanza v. Costanza, 213 A.D.2d 1044, 625 N.Y.S.2d 960 (4th Dep't 1995) (Income from various sources) ; Goodman v. Goodman, 195 Misc. 2d 204, 755 N.Y.S.2d 822 (Sup 2003) (income from distributive award); Cerami v. Cerami, 44 A.D.3d 815, 845 N.Y.S.2d 67 (2d Dep't 2007) (voluntarily-deferred income) .

89 Lago v. Adrion, 93 A.D.3d 697, 940 N.Y.S.2d 287 (2d Dep't 2012)

90 Pulver v. Pulver, 40 A.D.3d 1315, 837 N.Y.S.2d 369 (3d Dep't 2007)

91 Scammacca v. Scammacca, 15 A.D.3d 382, 790 N.Y.S.2d 482 (2d Dep't 2005) (income from construction business); Irene v. Irene, 41 A.D.3d 1179, 837 N.Y.S.2d 797 (4th Dep't 2007) (pre-divorce profit margin) ;

Yarinsky v. Yarinsky, 36 A.D.3d 1135, 829 N.Y.S.2d 710 (3d Dep't 2007) (financial decisions reduced amount of corporate nonemployment income received); Azizo v. Azizo, 51 A.D.3d 438, 859 N.Y.S.2d 113 (1st Dep't 2008) (gross revenue of the business)

wage, and upon statistics as to the average earnings of a person in a particular trade or profession.[92] Imputation of income may be based upon the testimony of an expert regarding a party's ability to earn an income. [93]

Although a court has considerable discretion to impute income to a parent the exercise of that discretion "must have some basis in law and fact." [94] If there is no basis in fact or in law for the imputation of income it will be reversed.[95]

In exercising the discretion to impute income to a party, a court is required to provide a clear record of the source from which the income is imputed and the reasons for such imputation. [96] Where the Court fails to specify the sources of income imputed and the actual dollar amount assigned to each category, the record is not sufficiently developed to allow appellate review and the imputation of income will be vacated.[97]

Domestic Relations Law § 240 authorizes the court to impute income to a parent for purposes of fixing child support, where the parent "receives money, goods or services from a relative or a friend".[98] An order increasing child support was affirmed by the Appellate Division where it was established that the father received money, goods, and services from his present wife. [99] It held that the increase was proper, in light of his allegedly reduced income, his failure to supply requested financial information regarding his businesses and discrepancies between those financial records which he did supply and his income tax return. However, in another case Huebscher v Huebscher,[100] an action for divorce where the wife was apparently honest with the court, the First Department held that plaintiff's testimony that defendant wife's mother had provided the couple with annual gifts during the course of their marriage, coupled with other evidence of her past generosity, was an improper basis upon which to impute income to the wife for purposes of establishing the proper level of child support, as it assumed that the gift-giving by her mother would continue in futuro. The court held that "since the mother had no legal obligation, this "income" source should not have been taken into account".[101] It has been held that a court may properly impute

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92 Kasabian v. Chichester, 72 A.D.3d 1141, 898 N.Y.S.2d 293 (3d Dep't 2010) (testimony that father possessed a commercial driver's license); Sharlow v. Sharlow, 77 A.D.3d 1430, 908 N.Y.S.2d 287 (4th Dep't 2010) (average salaries of plumbers, history of earnings, and evidence defendant worked under the table); Niagara County Dept. of Social Services ex rel. Kearns v. Hueber, 89 A.D.3d 1440, 932 N.Y.S.2d 631 (4th Dep't 2011) (based on the minimum wage); Niagara County Dept. of Social Services ex rel. Hueber v. Hueber, 89 A.D.3d 1433, 932 N.Y.S.2d 644 (4th Dep't 2011) (based on the minimum wage).

93 Lago v. Adrion, 93 A.D.3d 697, 940 N.Y.S.2d 287 (2d Dep't 2012)

94 Cattaraugus County Com'r of Social Services ex rel. Bund v. Bund, 259 A.D.2d 973, 687 N.Y.S.2d 512 (4th Dep't 1999); Gezelter v. Shoshani, 283 A.D.2d 455, 724 N.Y.S.2d 481 (2d Dep't 2001)

95 See for example Southwick v. Southwick, 202 A.D.2d 996, 612 N.Y.S.2d 704 (4th Dep't 1994); MacVean v. MacVean, 203 A.D.2d 661, 611 N.Y.S.2d 926 (3d Dep't 1994); Martusewicz v. Martusewicz, 217 A.D.2d 926, 630 N.Y.S.2d 156 (4th Dep't 1995); McBride v. McBride, 222 A.D.2d 563, 635 N.Y.S.2d 298 (2d Dep't 1995); Darling v. Darling, 220 A.D.2d 858, 632 N.Y.S.2d 252 (3d Dep't 1995); Cattaraugus County Com'r of Social Services ex rel. Bund v. Bund, 259 A.D.2d 973, 687 N.Y.S.2d 512 (4th Dep't 1999); Gezelter v. Shoshani, 283 A.D.2d 455, 724 N.Y.S.2d 481 (2d Dep't 2001); Rosenberg v. Rosenberg, 44 A.D.3d 1022, 845 N.Y.S.2d 371 (2d Dep't 2007).

96 Matter of Kristy Helen T. v. Richard F.G., Jr., 17 A.D.3d 684, 685, 794 N.Y.S.2d 92). Rohme v. Burns, 79 A.D.3d 756, 757, 912 N.Y.S.2d 652, 653–54 (2d Dept., 2010).

97 Id. at 685, 794 N.Y.S.2d 92; see Matter of Sena v. Sena, 61 A.D.3d 980, 981, 878 N.Y.S.2d 759; Matter of Genender v. Genender, 40 A.D.3d 994, 995, 836 N.Y.S.2d 291).

98 Id.; See Tesler v. Tesler, 228 A.D.2d 491, 644 N.Y.S.2d 316 (2d Dept. 1996).

99 Ladd v. Suffolk County DSS, 199 A.D. 2d 393, 605 N.Y.S. 318 (2d Dep't 1993)

100 206 A.D.2d 295, 614 N.Y.S.2d 524 (1st Dept.,1994)

101 See discussion of imputed income in Section 12-6, supra.

income to a spouse based upon a pattern of gifts from a relative, but not from sporadic gifts from a relative.[102] It was not an abuse of discretion to refuse to impute income from gifts given to plaintiff by her mother during the two years preceding the trial, to assist with her day-to-day needs and payment of bills during the time when defendant left his employment and, subsequently, the marital home, as well as during the pendency of this action when defendant failed to provide support for plaintiff and the children, where plaintiff testified that there was no agreement that her mother continue to give her such sums of money. Considering the timing and discretionary nature of the gifts, the decision not to impute these funds as income was not an abuse of discretion.[103]

19-7. Definition of Income - Additions to Gross (total) income in actions commenced on or after January 24, 2016

The statutory provisions for child support were amended effective January 24, 2016, to reflect the fact that spousal maintenance is money no longer available as income to the payor, but constitutes income to the payee, so long as the order or agreement for such maintenance lasts. [104]

Family Court Act § 413(1) (b) (5) (iii) and Domestic Relations Law § 240(1-b) (5) (iii) were amended to add a new subclause (I) to each that requires that alimony or spousal maintenance actually paid to a spouse who is a party to the action must be added to the recipient spouse's income, provided that the order contains an automatic adjustment to take effect upon the termination of the maintenance award. [105] According to the New York Assembly Memorandum in Support of Legislation this addition would be based upon an amount already paid, e.g., an amount reported on the recipient spouse's last income tax return, and would not simply be an estimate of future payments. [106]

At the same time Family Court Act § 413 (1)(b)(5)(vii)(C) and Domestic Relations Law § 240(1-b)(5)(vii)(C) were amended to specify that alimony or maintenance actually paid or to be paid to a spouse who is a party

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102 Rostropovich v. Guerrand-Hermes, 18 A.D.3d 211, 211, 794 N.Y.S.2d 42, 43 (1st Dept., 2005) (income imputed to husband who received pattern of gifts from father but gifts wife received from her father were sporadic and not imputed); See also Rooney v. Rooney, 938 N.Y.S.2d 724, 725, 92 A.D.3d 1294, 1295, (4 Dept.,2012) ("We also reject defendant's contention in appeal No. 3 that, in * calculating the amount of child support, the Referee erred in failing to impute income to plaintiff based on cash gifts that she received from her mother (see Domestic Relations Law ' 240[1Bb][b][5][iv][D]). The evidence at trial supported the Referee's finding that the cash gifts were sporadic in nature, rather than regular and expected (see Rostropovich v. Guerrand Hermes, 18 A.D.3d 211, 794 N.Y.S.2d 42").

103 Noble v. Noble, 78 A.D.3d 1386, 911 N.Y.S.2d 252 (3 Dept., 2010); See also Mayle v Mayle, 299 A.D.2d 869, 750 N.Y.S.2d 256 (4th Dep't 2002) (error to impute income to husband based on living expenses provided to him by his girlfriend.).

104 Laws of 2015, Ch. 387, approved October 26, 2015, effective January 24, 2016.

105 Family Court Act § 413(1) (b) (5) (iii) and Domestic Relations Law § 240(1-b) (5) (iii) as amended by Laws of 2015, Ch. 387, approved October 26, 2015, effective January 24, 2016.

Subdivision (I) reads as follows:

(I) alimony or maintenance actually paid or to be paid to a spouse who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse; provided, however, that the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with subdivision three of section four hundred fifty-one of this article. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of this subclause, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to paragraph (a) of subdivision three of section four hundred fifty-one of this article.

106 See New York Assembly Memorandum in Support of Legislation, Laws of 2015, Ch. 387.

to the instant action, pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, must be deducted from income prior to applying the provisions of Domestic Relations Law §240 (1-b) (5). In such event, the order or agreement must provide for a specific adjustment, in accordance with Domestic Relations Law §240 (1-b) (5), in the amount of child support payable upon the termination of alimony or maintenance to such spouse. [107]

The specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with Family Court Act § 451(3) or Domestic Relations Law § 236[B] (9) (b) (2). In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior January 24, 2016, these provisions shall not, by themselves, constitute a substantial change of circumstances pursuant to Family Court Act §451 (3) (a) or Domestic Relations Law § 236[B] (9)(b)(2).[108]

This is intended to clarify that, where spousal maintenance payments are deducted from the payor's income, the order must contain a specific provision adjusting the child support amount automatically upon the termination of the spousal maintenance award. [109]

According to the New York Assembly Memorandum in Support of the amendment this relieves the custodial parent of the burden of moving for a modification of the child support order upon the termination of maintenance, but leaves open the possibility for either or both parties to seek a modification of the automatic adjustment if, at the point where maintenance terminates, the income of either of the parties has changed in an amount that would qualify for modification under Family Court Act § 451(3)(b)(ii) or Domestic Relations Law § 236 [B](9)(b)(2)(ii), e.g., in excess of 15% or a lapse of three years or more.[110]

19-8. Definition of Income - Additions to Income

In addition, to the extent not already included in gross income, the following self-employment deductions attributable to self-employment carried on by the taxpayer are included in "income":

(A) any depreciation deduction greater than depreciation calculated on a straight-line basis for the purpose of determining business income or investment credits, and

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107 Family Court Act § 413(1) (b) (5) (vii) and Domestic Relations Law § 240(1-b) (5) (vii) as amended by Laws of 2015, Ch. 387, approved October 26, 2015, effective January 24, 2016.

Subdivision (C) reads as follows:

(C) alimony or maintenance actually paid or to be paid to a spouse who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse; provided, however, that the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with subdivision three of section four hundred fifty-one of this article. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of this subclause, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to paragraph (a) of subdivision three of section four hundred fifty-one of this article.

108 Family Court Act § 413(1) (b) (5) (vii) and Domestic Relations Law § 240(1-b) (5) (vii) as amended by Laws of 2015, Ch. 387, approved October 26, 2015, effective January 24, 2016.

109 See New York Assembly Memorandum in Support of Legislation, Laws of 2015, and Ch. 387.

110 See New York Assembly Memorandum in Support of Legislation, Laws of 2015, and Ch. 387.

(B) entertainment and travel allowances deducted from business income to the extent said allowances reduce personal expenditures.[111]

19-9. Definition of Income - Deductions from Income

The following are deducted from "income":

(A) unreimbursed employee business expenses except to the extent these expenses reduce personal expenditures.

(B) alimony or maintenance actually paid to a spouse not a party to the instant action pursuant to court order or validly executed written agreement,

(C) alimony or maintenance actually paid or to be paid to a spouse who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement must provide for a specific adjustment in the amount of child support payable upon the termination of alimony or maintenance to such spouse. However, the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with Domestic Relations Law§ 236[B][9][b][2]. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to January 24, 2016, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to Domestic Relations Law§ 236 [B][9][b].

(D) child support actually paid pursuant to court order or written agreement on behalf of any child for whom the parent has a legal duty of support and who is not subject to the instant action,

(E) public assistance,

(F) supplemental security income,

(G) New York city or Yonkers income or earnings taxes actually paid, and

(H) federal insurance contributions act (FICA) taxes actually paid.[112]

19-10. Child Support - Non-Custodial Parent in Joint and Shared custody situations

Who is the non-custodial parent for purposes of awarding child support in joint and shared custody situations? The Child Support Standards Act ("CSSA") states that the custodial parent shall pay sums of money to the non-custodial parent but does not define who is the custodial parent, nor address joint custody or shared custody situations. Defining the term "joint custody" is difficult because the term "custody" is not defined by the cases or statutes. It has been said that "joint legal custody", which is sometimes called "divided custody" or "joint decision making", gives both parents a shared responsibility for and control of a child's upbringing. It may include an arrangement between the parents whereby which they alternate physical custody of the child. [113]

111 Domestic Relations Law §240(1-b)(b)(5)(vii)

112 Domestic Relations Law §240(1-b) (b) (5) (iii).

113 Braiman v Braiman, 44 NY2d 584, 407 NYS2d 449 (1978).

In Bast v Rossoff [114]the Court of Appeals held that "in shared custody situations child support should be calculated as it is in any other case." It agreed with the lower courts and the parties that the CSSA applies to cases of shared custody and stated that the more difficult issue to resolve was how the CSSA should be applied in cases of shared custody. It noted that in New York "shared custody" encompasses a number of situations including joint decision making, joint legal custody or shared physical custody of the child. The Court explained in detail that the CSSA sets forth "a precisely articulated, three step method" for determining the basic child support obligation as outlined in *Matter of Cassano v Cassano.*[115] Although the CSSA is silent on the issue of shared custody and speaks in terms of a "custodial" and "non-custodial" parent in the application of its methodology, the Court of Appeals saw no reason to abandon the statute, and its federally mandated policy considerations, in shared custody cases. While "joint custody" is generally used to describe joint legal custody or joint decision making the Court was aware that many divorcing parents wish to maximize their parenting opportunities through expanded visitation or shared custody arrangements. It held that the reach of the CSSA should not be shortened because of the terminology employed by divorcing parents in settling custody arrangements. It stated that in most instances, the court can determine the custodial parent for purposes of child support by identifying which parent has physical custody of the child for a majority of the time. The reality of the situation governs. Even though each parent has a custodial period in a shared custody arrangement, for purposes of child support, the court can still identify the primary custodial parent.[116]

Baraby v Baraby [117] was a shared custody case. The Supreme Court found that neither parent could be said to have the children for the majority of the time, and held that the parent with the greater share of the child support obligation, should pay child support to the other parent. The Third Department held that the three-step method for determining the basic child support obligation must be applied in all shared custody cases, based upon the explicit language in Bast. It observed that the Court of Appeals did not specifically address how to apply the CSSA in cases of equally shared custody, but construed Bast as requiring the application of the CSSA to equally shared custody situations. It held that the parent having the greater pro rata share of the child support obligation, determined after application of the three-step statutory formula should be identified as the "noncustodial" parent for the purpose of support, regardless of the labels employed by the parties.[118] That parent must be directed to pay his or her pro rata share of the child support obligation to the other parent unless "the statutory formula yields a result that is unjust or inappropriate." In that event, the trial court can resort to the 'paragraph (f)' factors and order payment of an amount that is just and appropriate".

The Appellate Division, First Department, rejected the rule established in Baraby v Baraby,[119] that in an equally shared custody case the parent who has the greater income should be considered the noncustodial parent for purposes of support. It held in Rubin v. Salla,[120] based on the plain language of the Child Support Standards Act, that a custodial parent cannot be directed to pay child support to a noncustodial parent, and that the "custodial

114 Bast v. Rossoff, 91 N.Y.2d 723, 675 N.Y.S.2d 19, 697 N.E.2d 1009 (1998).

115 Cassano v. Cassano, 85 N.Y.2d 649, 652, 628 N.Y.S.2d 10, 651 N.E.2d 878 (1995).

116 Bast v. Rossoff, 91 N.Y.2d 723, 675 N.Y.S.2d 19, 697 N.E.2d 1009 (1998).

117 Baraby v. Baraby, 250 A.D.2d 201, 681 N.Y.S.2d 826 (3d Dep't 1998).

118 Baraby v. Baraby, 250 A.D.2d 201, 681 N.Y.S.2d 826 (3d Dep't 1998).

119 Baraby v. Baraby, 250 A.D.2d 201, 204, 681 N.Y.S.2d 826 (3d Dep't 1998)

120 Rubin v. Salla, 107 A.D.3d 60, 964 N.Y.S.2d 41 (1st Dep't 2013).

parent", in an equally shared custody case, is "the parent who has the child the majority of the time, which is measured by the number of overnight time that parent has with the child." The Court distinguished the decision in Baraby. The Appellate Division rejected the counting of waking hours as a method of determining who is the custodial parent. Instead, Justice Richter believed that the number of overnights, not the number of waking hours, is the most practical and workable approach. Allowing a parent to receive child support based on the number of daytime hours spent with the child bears no logical relation to the purpose behind child support awards, i.e., to assist a custodial parent in providing the child with shelter, food, and clothing. Because a child's activities are subject to constant change, the number of hours spent with each parent becomes "a moving target."

19-11. Add-ons - Child Care - Domestic Relations Law §240(1-b) (c) (4) and Domestic Relations Law §240(1-b) (c) (6).

The sum derived by the application of the formula must be increased where the custodial parent is working or receiving education or vocational training which will lead to employment. It is increased by the amount of the non-custodial parent's pro rata share of "reasonable child care expenses". The "reasonable child care expenses" must be prorated in the same proportion as each parent's income is to the "combined parental income". Each parties pro rata share of the child care expenses must be separately stated. [121]

When the Court determines that the custodial parent is "seeking work" and incurs child care expenses as a result of seeking work, in its discretion it may determine "reasonable child care expenses" and apportion them between the custodial and the non-custodial parent. There is no requirement that the "reasonable child care expenses" be prorated in the same proportion as each parent's income is to the "combined parental income". The Court has the discretion to direct the manner of the payment.[122]

19-12. Add-ons - Health Care Not Covered by Insurance - Domestic Relations Law 240(1-b) (c) (5) - Cash Medical Support

Where health insurance benefits are determined by the court to be available, the cost of providing health insurance benefits must be prorated between the parties in the same proportion as each parent's income is to the combined parental income. If the custodial parent is ordered to provide such benefits, the non-custodial parent's pro rata share of such costs must be added to the basic support obligation. If the non-custodial parent is ordered to provide the benefits, the custodial parent's pro rata share of such costs must be deducted from the basic support obligation. [123]

"Cash medical support" means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by a parent through an employer or organization, including employers or organizations which are self-insured, or through other available health insurance or health care coverage plans, and/or for other health care expenses not covered by insurance. [124]

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121 Domestic Relations Law §240(1-b) (c) (4).

122 Domestic Relations Law §240(1-b) (c) (6).

123 Domestic Relations Law 240(1-b) (c) (5) (ii), as added by Laws of 2009, Ch. 215 § 2. Family Court Act §413 (1) (c) (5) (ii), as added by Laws of 2009, Ch. 215 § 1.

124 Domestic Relations Law §240 (1-b), (c) (5), as added by Laws of 2009, Ch. 215 § 2. Family Court Act §413 (1) (c), (5)), as added by Laws of 2009, Ch. 215 § 1.

Where health insurance benefits are determined by the court to be unavailable, the court must order the non-custodial parent to pay cash medical support.[125] In addition, the court must prorate each parent's share of reasonable health care expenses not reimbursed or paid by insurance, the medical assistance program, or the state's child health insurance plan, in the same proportion as each parent's income is to the combined parental income. The court must state the non-custodial parent's share as a percentage in the order.[126]

The non-custodial parent's cash medical support obligation may not exceed five percent of his or her gross income, or the difference between the non-custodial parent's income and the self-support reserve, whichever is less.[127]

If either party establishes that cash medical support would be unjust or inappropriate pursuant to Domestic Relations Law §240 (1-b) (f), the court must order the parties to pay cash medical support as the court finds just and appropriate, considering the best interests of the child. [128]

Every order directing the payment of support must require that if either parent currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover the child, the parent is required to exercise the option of additional coverage in favor of such child and execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.[129]

"Health insurance benefits" means any medical, dental, optical and prescription drugs and health care services or other health care benefits that may be provided for a dependent through an employer or organization, including such employers or organizations which are self-insured, or through other available health insurance or health care coverage plans.[130]

"Available health insurance benefits" means any health insurance benefits that are reasonable in cost and that are reasonably accessible to the person on whose behalf the petition is brought. Health insurance benefits that are not reasonable in cost or whose services are not reasonably accessible to such person are considered unavailable.[131]

The cost of health insurance benefits refers to the cost of the premium and deductible attributable to adding the child or children to existing coverage or the difference between such costs for self-only and family coverage. [132] When the person on whose behalf the petition is brought is a child, health insurance benefits are considered

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125 Domestic Relations Law §240 (1-b), (c) (5) (v) (C), as added by Laws of 2009, Ch. 215, §2. Family Court Act §413 (1) (c) (5) (v) (C), as added by Laws of 2009, Ch. 215, §1. Section 8-5 for a more complete discussion of cash medical support.

126 Domestic Relations Law § 240 (1-b), (c) (5) (v), as added by Laws of 2009, Ch. 215, §2. Family Court Act §413 (1) (c) (5) (v), as added by Laws of 2009, Ch. 215, §1.

127 Domestic Relations Law §240 (1-b), (c) (5), as added by Laws of 2009, Ch. 215, §2. Family Court Act §413 (1) (c) (5), as added by Laws of 2009, Ch. 215, §1.

128 Domestic Relations Law §240 (1-b), (c) (5) (vi) (A), as added by Laws of 2009, Ch. 215, §2. Family Court Act §413, subdivision 1 (c) (5) (vi) (A), as added by Laws of 2009, Ch. 215, §1.

129 Domestic Relations Law § 240 1. (a)

130 Domestic Relations Law § 240 1. (a) (1)

131 Domestic Relations Law § 240 1. (a) (2)

132 Domestic Relations Law § 240 1. (a) (3)

"reasonable in cost" if the cost of health insurance benefits does not exceed five percent of the combined parental gross income. [133]

The presumption that the health insurance benefits are reasonable in cost may be rebutted upon a finding that the cost is unjust or inappropriate. Such finding must be based on the circumstances of the case, the cost and comprehensiveness of the health insurance benefits for which the child or children may otherwise be eligible, and the best interests of the child or children. [134]

Health insurance benefits may not be considered "reasonable in cost" if a parent's share of the cost of extending such coverage would reduce the income of that parent below the self-support reserve. [135]

Health insurance benefits are "reasonably accessible" if the child lives within the geographic area covered by the plan or lives within thirty minutes or thirty miles of travel time from the child's residence to the services covered by the health insurance benefits or through benefits provided under a reciprocal agreement. This presumption may be rebutted for good cause shown including, but not limited to, the special health needs of the child. [136]

19-13. Add-ons - Education Expenses - Domestic Relations Law §240(1-b) (c) (6)

The Court, in its discretion, may make an award directing the non-custodial parent to pay the costs of present or future post-secondary, private, special or enriched education for the child. There is no requirement that the costs of present or future post-secondary, private, special or enriched education for the child be prorated in the same proportion as each parent's income is to the "combined parental income". The non-custodial parent must pay such expenses in the manner determined by the Court. [137]

19-14. Child Support - Determining How Much Income to Apply Statutory Percentage to Where Combined Parental Income is in Excess of the Statutory income cap

There is no fixed rule to enable a court to determine whether and how much income in excess of the income cap set forth in social services law 111-i, [138] should be considered by the court in determining combined parental income.

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133 Domestic Relations Law § 240 1. (a) (3)

134 Domestic Relations Law § 240 1. (a) (3)

135 Domestic Relations Law § 240 1. (a) (3)

136 Domestic Relations Law § 240 1. (a) (3)

137 Domestic Relations Law §240(1-b) (c) (7).

In Cimons v. Cimons, 53 A.D.3d 125, 861 N.Y.S.2d 88 (2d Dep't 2008) the Second Department departed from its earlier approach to the treatment of "add-ons" and held that under the circumstances, the obligation to provide for the future college education expenses of the children was not part of the parties' basic child support obligation and therefore was not subject to the Child Support Standards Act (CSSA) requirement that any deviation from statutorily-mandated child support obligations must be recited and explained in a stipulation of settlement.

138 Soc. Serv. Law § 111-i (2) (b) provides:

The combined parental income amount to be reported in the child support standards chart and utilized in calculating orders of child support in accordance with subparagraph two of paragraph (c) of subdivision one of section four hundred thirteen of the family court act and subparagraph two of paragraph (c) of subdivision one-b of section two hundred forty of the domestic relations law as of January thirty-first, two thousand fourteen shall be one hundred forty-one thousand dollars; provided, however, beginning January thirty-first, two thousand sixteen and every two years thereafter, the combined parental income amount shall increase by the sum of the average annual percentage changes in

In Cassano v Cassano,[139] the Court of Appeals stated that where combined parental income exceeds the income cap [now the amount set forth in Social Services Law 111-i] the statute provides that "the court shall determine the amount of child support for the amount of the combined parental income in excess of such dollar amount through consideration of the factors set forth in paragraph (f) of this subdivision and/or the child support percentage". The "paragraph (f)" factors include the financial resources of the parents and child, the health of the child and any special needs, the standard of living the child would have had if the marriage had not ended, tax consequences, nonmonetary contributions of the parents toward the child, the educational needs of the parents, the disparity in the parents' incomes, the needs of other nonparty children receiving support from one of the parents, extraordinary expenses incurred in exercising visitation and any other factors the court determines are relevant. As to combined parental income over the income cap the Court stated that the statute explicitly affords an option: the court may apply the factors set forth in section 413(1) (f) "and/or the child support percentage" (Family Ct. Act § 413[1] [c] [3]). Pertinent as well to income above the income cap is the provision that the court may disregard the formula if "unjust or inappropriate" but in that event, must give its reasons in a formal written order, which cannot be waived by either party (Family Ct. Act § 413[1][g]). In its view, "and/or" should be read to afford courts the discretion to apply the "paragraph (f)" factors, or to apply the statutory percentages, or to apply both in fixing the basic child support obligation on parental income over the income cap. However, some record articulation of the reasons for the court's choice to apply the percentage is necessary to facilitate that review. The stated basis for an exercise of discretion to apply the formula to income over the income cap should, in sum and substance, reflect both that the court has carefully considered the parties' circumstances and that it has found no reason why there should be a departure from the prescribed percentage. Significantly, it held that the provision allowing the Court to disregard the formula if 'unjust and inappropriate' was pertinent to income over the statutory cap as well as under the cap. . The Court noted, however, that if it disregards the formula, reasons must be set forth in a formal written order which cannot be waived by either party.

The Court also rejected the defendant's argument that it was error for Family Court to require him to pay his share of future unreimbursed medical expenses because the law had been that "open-ended" awards were improper. The Court of Appeals held that the argument was meritless in light of the Act's specific provisions which require the Court to apportion health care expenses. [140]

It is well settled since Cassano that blind application of the statutory formula to combined parental income over the statutory cap, without any express findings or record evidence of the children's actual needs, constitutes an abdication of judicial responsibility and renders meaningless the statutory provision setting a cap on the strict application of the formula. The court should not blindly apply the statutory formula to the combined parental income in excess of the statutory cap without an express finding of the needs of the child. [141]

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the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the current combined parental income amount and then rounded to the nearest one thousand dollars.

139 85 N.Y.2d 649, 651 N.E.2d 878 (1985)

140 See Family Court Act §413(1) (c) (5) and Domestic Relations Law §240(1-b) (c) (5).

141 In Gluckman v. Qua, 253 A.D.2d 267, 687 N.Y.S.2d 460 (3d Dep't 1999), the Third Department held that the "blind application" rule was consistent with Cassano. It concluded that although a court is not permitted to make an award based solely on their actual needs the children's needs are an appropriate factor to be considered when determining an award of child support on income in excess of $80,000.

When the combined parental income exceeds the "statutory cap" in effect "the court shall determine the amount of child support for the combined parental income in excess of the cap through consideration of the subdivision (f) factors and/or the child support percentage, or both. The Court must articulate an explanation of the basis for its calculation of child support based on parental income above the statutory cap. The test generally applied is whether the child is receiving enough to meet his or her "actual needs and the amount required to live an appropriate lifestyle".[142]

19-15. Child Support - Based on Actual Need in High-Income Cases

In high-income cases, the appropriate determination for an award of child support should be based on the child's actual needs and the amount that is required for the child to live an appropriate lifestyle, rather than the wealth of one or both parties.[143]

All of the Appellate Divisions have adopted the rule that in high-income cases the child support award should be based on the child's needs and standard of living.

In Anonymous v. Anonymous,[144] the trial court fixed child support in an amount necessary to enable the child to significantly enjoy the aspects of the parties' marital standard of living consistent with the social milieu in which she was raised. The First Department commented that "...we note that consideration of the child's actual needs with reference to the prior standard of living continues to be appropriate in determining an award of child support on parental income in excess of $80,000.00" [now the amount set forth in Social Services Law§ 111-i]. The Court referred to Gluckman v Qua,[145] where the Third Department held that the children's needs are one of the factors to be considered if the court decides to deviate from the statutory percentage in excess of the income cap.

In Brim v Combs, [146] the Second Department stated: "...in calculating the award of child support to the mother under Family Court Act § 413, the Support Magistrate erred in basing the award in part on the amount of child support the father paid for his other child by a different woman, particularly where no evidence was presented as to that child's expenses, resources, and needs. To this end, in high income cases, the appropriate determination under Family Court Act § 413(f) for an award of child support on parental income in excess of $80,000 [now the

142 Keith v. Lawrence, 113 A.D.3d 615, 978 N.Y.S.2d 316 (2d Dep't 2014); In Antinora v Antinora, 125 A.D.3d 1336, 3 N.Y.S.3d 500 (4 Dept., 2015) the Appellate Division agreed with the husband that the court failed to articulate a proper basis for applying the Child Support Standards Act (CSSA) to the combined parental income in excess of the statutory cap, which was $136,000 at the time. The court failed to indicate how the children's actual needs would not be met if it had calculated child support at the statutory cap. It is well settled that "'blind application of the statutory formula to (combined parental income) over ($136,000), without any express findings or record evidence of the children's actual needs, constitutes an abdication of judicial responsibility and renders meaningless the statutory provision setting a cap on strict application of the formula’'.

143 See Brim v. Combs, 25 A.D.3d 691, 808 N.Y.S.2d 735 (2d Dep't 2006), leave to appeal denied, 6 N.Y.3d 713, 816 N.Y.S.2d 749, 849 N.E.2d 972 (2006), citing Anonymous v. Anonymous, 286 A.D.2d 585, 729 N.Y.S.2d 890 (1st Dep't 2001)); Culhane v. Holt, 28 A.D.3d 251, 813 N.Y.S.2d 400 (1st Dep't 2006); Y.W. v. T-T.J., 47 A.D.3d 538, 851 N.Y.S.2d 403 (1st Dep't 2008); Vladlena B. v. Mathias G., 52 A.D.3d 431, 861 N.Y.S.2d 331 (1st Dep't 2008); Erin C. v. Peter H., 66 A.D.3d 451, 887 N.Y.S.2d 551 (1st Dep't 2009): Jackson v. Tompkins, 65 A.D.3d 1148, 885 N.Y.S.2d 228 (2d Dep't 2009); Williams v. Rodriguez, 66 A.D.3d 914, 886 N.Y.S.2d 631 (2d Dep't 2009); Quinn v. Quinn, 61 A.D.3d 1067, 876 N.Y.S.2d 720 (3d Dep't 2009); Doscher v Doscher, 137 A.D.3d 962, 27 N.Y.S.3d 231 (2d Dept.,2016)

144 286 A.D.2d 585 (1st Dept. 2001)

145 253 AD2d 267.

146 25 A.D.3d 691, 808 N.Y.S.2d 735 (2 Dept., 2006).

amount set forth in Social Services Law§ 111-i] should be based on the child's actual needs and the amount that is required for the child to live an appropriate lifestyle, rather than the wealth of one or both parties". [147]

In Matter of Michelle M., [148] the Appellate Division stated: "In cases such as this, where the combined parental income is well in excess of $80,000 [now the amount set forth in Social Services Law§ 111-i], it is proper to consider and base the award upon the child's " 'actual reasonable needs' "(Anonymous v. Anonymous, 222 A.D.2d 305, 306). Although children must generally be permitted to share in a noncustodial parent's enhanced standard of living and a court is not permitted to make an award based solely on their actual needs, we may consider the child's needs in determining an award of child support on income exceeding the $80,000 cap."

19-16. Child Support - Effect of insufficient evidence to determine gross income

When a party has defaulted and/or the court is otherwise presented with insufficient evidence to determine gross income, the court must order child support based upon the needs or standard of living of the child, whichever is greater. This order may be retroactively modified upward, without a showing of a change in circumstances.[149]

19-17. Child Support - Self-Support Reserve

The "Self-support reserve" means the self-support reserve as defined in the child support standards act and codified in Domestic Relations Law § 240 and Family Court Act § 413. [150]

The "Self-support Reserve" as defined in the child support standards act and codified in Domestic Relations Law § 240 and Family Court Act § 413 is 135% of the "poverty income guidelines"' amount for a single person amended as reported by the Federal Department of Health and Human Services. On March 1st of each year, the self-support reserve is revised to reflect annual updating of the guidelines. [151]

As of June 1, 2017 the combined parental income amount was $143,000, the self-support reserve was $16,281 and the poverty income guidelines amount for a single person was $12,060. [152]

The poverty income guidelines for a single person are published annually by the Federal Department of Health and Human Services. The Social Services Law requires the Commissioner of Social Services to publish, on March 1 of each year in department regulations, the revised self-support reserve, as defined in Family Court Act §413 and Domestic Relations Law §240, to reflect the annual updating of the poverty income guidelines amount for a single person as reported by the Federal Department of Health and Human Services. [153]

Where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount for a single person, the basic child support obligation is twenty-five dollars per month. However, that if the court finds that such basic child support obligation is unjust or inappropriate, based upon considerations of the factors set forth in Domestic Relations Law §240 [1-b] [f],

147 Citing Anonymous v. Anonymous, 286 A.D.2d 585, 729 N.Y.S.2d 890.

148 42 A.D.3d 882, 839 N.Y.S.2d 892 (4 Dept. 2007).

149 Domestic Relations Law § 240(1-b) (k). There is an identical provision in the Family Court Act.

150 Domestic Relations Law § 236 [B] [6] [b] [9].

151 See Domestic Relations Law §240 [1-b] [b] [6].

152 See https://www.childsupport.ny.gov/child_support_standards.html (last accessed June 1, 2017) for the current amounts.

153 Social Services Law §111-I (2), as added by Laws of 2015, Ch. 343, effective December 24, 2015.

the court shall order the non-custodial parent to pay such amount of the child support as the court finds just and appropriate.[154]

Where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the self-support reserve but not below the poverty income guidelines amount for a single person, the basic child support obligation shall be fifty dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater, in addition to any amounts that the court may, in its discretion, order in accordance with Domestic Relations Law §240 [1-b] [c], subparagraphs four, five, six and/or seven. [155]

154 Domestic Relations Law §240 [1-b] [d]

155 Domestic Relations Law §240 [1-b] [d]