
- Maintenance Awards FAQ's -

1. What is Maintenance?

"Maintenance" is defined as payments having regard for the standard of living of the parties established during the marriage, which may be:

- at fixed intervals,
- for a definite or indefinite time,
- which terminates upon the death of either party, upon the recipient's valid or invalid marriage, or upon modification upon habitually living with someone else and holding him/her out as your spouse.

2. How is Maintenance Calculated?

The Court must consider many statutory factors and guidelines in Domestic Relations Law §236(B)(6) in determining the amount and duration of maintenance.

3. Do I get more maintenance or equitable distribution if my spouse committed adultery or committed cruel and inhuman treatment?

No. But you may get less maintenance if you committed adultery or cruel and inhuman treatment

It depends on what part of the state the action is brought. The role of marital fault is largely irrelevant with regard to the distribution of marital property and probably with regard to maintenance. The statutory factors for the distribution of marital property and for setting the amount and duration of maintenance make no reference to marital fault. However, there is a catchall factor which permits the court to consider "any other factor which the court shall expressly find to be just and proper".

The rule is that marital fault ordinarily is irrelevant under the Equitable Distribution Law and should be considered only when it is so uncivilized or egregious that it shocks the conscience of the court. Even where the misconduct is egregious, it is but one factor among many which must be considered by the court. Examples given of "egregious" misconduct are (1) the dissipation of marital assets by a gambler husband, and (2) placing a contract to have a spouse murdered. The courts in the Third Judicial Department [which includes the Albany area upstate New York] have

rejected this rule when it comes to the role of marital fault with regard to maintenance and consider egregious marital fault in fixing maintenance awards.

4. What is durational maintenance?

It is maintenance for a fixed period of time.

5. What is "permanent", "lifetime" or "non-durational" maintenance?

It is maintenance for a period of time that is not fixed by the court.

6. Can a man be awarded maintenance?

Yes. New York support laws are "gender-neutral".

7. Will permanent maintenance end if I remarry?

Yes.

8. Will durational maintenance end if I remarry?

Yes.

9. What factors do the courts consider in determining whether to award durational or permanent maintenance?

The court may consider statutory guidelines and an advisory schedule in determining the duration of maintenance. Durational maintenance is more commonly awarded where the spouse seeking support is relatively young and healthy and is not required to care for young children. The function of durational maintenance is to allow the recipient spouse an opportunity to achieve independence.

Where a marriage is of short duration and especially if the parties have no children, New York courts are disinclined to grant permanent maintenance. Unless the applicant establishes dependency, the prevailing policy is to award rehabilitative maintenance, if any, is awarded at all.

Where permanent maintenance has been awarded, the recipient spouse has almost invariably been older and often in impaired health. Furthermore, the supporting spouse was in a far better financial condition.

New York courts in awarding maintenance are very much concerned about the length of the marriage, the ages, health and earning capacity of the respective parties. The duration of maintenance is most apt to be

permanent where it is a long-term marriage, and durational where it is a short-term marriage. The Legislature intended that the pre-divorce standard of living be a mandatory factor for the courts consideration in determining the amount and duration of the maintenance award, and that the court must consider the wife's pre-divorce standard of living.

Correspondingly, a pre-divorce "high life" standard of living does not guarantee an award of lifetime maintenance. The courts must consider the payee spouse's reasonable needs and pre-divorce standard of living in the context of the other enumerated statutory factors, and then, in their discretion, fashion a fair and equitable maintenance award.

10. What is considered a lengthy marriage?

No authoritative date line has been drawn between short-term and long-term marriages. A marriage of seven years' duration has been described as short term, and perhaps any marriage of less than 10 years fits that category. Certainly, if the marriage endured for 12, 18, 20 years or more, it will be regarded as a long-term marriage, especially if there are children or is a dependency.