

Ala. R. Jud. Admin. Rule 32

Preface relating to scope.

This rule, as amended effective January 1, 2009, shall apply to all new actions filed or proceedings instituted on or after January 1, 2009. Any actions or proceedings instituted before January 1, 2009, shall be governed by Rule 32 as it read before January 1, 2009.

(A) Child support guidelines established. Guidelines for child support are hereby established for use in any action to establish or modify child support, whether temporary or permanent. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the establishment or modification of a child support order, that the amount of the order that would result from the application of these guidelines is the correct amount of child support to be ordered. A written finding on the record indicating that the application of the guidelines would be unjust or inappropriate shall be sufficient to rebut the presumption if the finding is based upon:

(i) A fair, written agreement between the parties establishing a different amount and stating the reasons therefor; or

(ii) A determination by the court, based upon evidence presented in court and stating the reasons therefor, that application of the guidelines would be manifestly unjust or inequitable.

(1) Reasons for deviating from the guidelines.

Reasons for deviating from the guidelines may include, but are not limited to, the following:

(a) Shared physical custody or visitation rights providing for periods of physical custody or care of children by the obligor parent substantially in excess of those customarily approved or ordered by the court;

(b) Extraordinary costs of transportation for purposes of visitation borne substantially by one parent;

(c) Expenses of college education incurred prior to a child's reaching the age of majority;

(d) Assets of, or unearned income received by or on behalf of, a child or children;

(e) The assumption under the Schedule of Basic Child-Support Obligations that the custodial parent will claim the federal and state income-tax exemptions for the children in his or her custody will not be followed in the case;

(f) The actual child-care costs incurred on behalf of the children because of the employment or job search of either parent exceeds the costs allowed under subsection (B) (8) of this rule by twenty percent (20%) or more; and

(g) Other facts or circumstances that the court finds contribute to the best interest of the child or children for whom child support is being determined.

The existence of one or more of the reasons enumerated in this section does not require the court to deviate from the guidelines, but the reason or reasons may be considered in deciding whether to deviate from the guidelines. The court may deviate from the guidelines even if no reason enumerated in this section exists, if evidence of other reasons justifying deviation is presented.

(2) Stipulations. Stipulations presented to the court shall be reviewed by the court before approval. No hearing shall be required; however, the court shall use the guidelines in reviewing the adequacy of child-support orders negotiated by the parties and shall review income statements that fully disclose the financial status of the parties. The court, however, may accept from the parties and/or their attorneys of record a Child-Support Guidelines Notice of Compliance (Form CS-43) that indicates compliance with this rule or, in the event the guidelines have not been followed, the reason for the deviation therefrom and the amount of support that would have been required under the guidelines.

(3) Modifications. The guidelines shall be used by the parties as the basis for periodic updates of child-support obligations.

(a) The provisions of any judgment respecting child support shall be modified only as to installments accruing after the filing of the petition for modification.

(b) A party seeking a modification of child support must plead and prove that there has occurred a material change in circumstances that is substantial and continuing since the last order of child support.

(c) There shall be a rebuttable presumption that child support should be modified when the difference between the existing child-support order and the amount determined by application of these guidelines varies more than ten percent (10%), unless the variation is due to the fact that the existing child-support order resulted from a rebuttal of the guidelines and there has been no change in the circumstances that resulted in the rebuttal of the guidelines.

(d) The existence of the guidelines or periodic changes to the guidelines in and of themselves do not constitute proof of a material change in circumstances that is substantial and continuing.

(e) A trial court has discretion and authority to modify a child-support obligation even when there is not a ten percent (10%) variation between the current obligation and the guidelines when a petitioner has proven a material change in circumstances that is substantial and continuing. Likewise, a trial court has discretion to deny a modification even when the ten percent (10%) variation is present, based on a finding that the application of the guidelines in that case would be manifestly unjust or inequitable.

(f) The need to provide for the children's health care needs in the order, through health insurance or other means, is an adequate basis to modify an order, regardless of whether a modification of the dollar amount of child support is necessary.

(4) Health-care needs. All orders establishing or modifying child support shall, at a minimum, provide for the children's health-care needs through private or public health care coverage and/or cash medical support. Normally, health care coverage that can be obtained for the children should be required if it is available to either parent through his or her employment or pursuant to any other plan at a reasonable cost and is accessible to the children.

(B) Definitions.

(1) Income. For purposes of the guidelines established by this rule, "income" means actual gross income of a parent, if the parent is employed to full capacity, or the actual gross income the parent has the ability to earn if the parent is unemployed or underemployed.

(2) Gross income.

(a) "Gross income" includes income from any source, and includes, but is not limited to, salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, Veterans benefits, workers' compensation benefits, unemployment-insurance benefits, disability-insurance benefits, gifts, prizes, and preexisting periodic alimony.

(b) "Gross income" does not include child support received for other children or benefits received from means-tested public-assistance programs, including, but not limited to, Temporary Assistance for Needy Families, Supplemental Security Income, food stamps, and general assistance.

(3) Self-employment income.

(a) For income from self-employment, rent, royalties, proprietorship of business, or joint ownership of partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce this income, as allowed by the Internal Revenue Service, with the exceptions noted in subsection (B) (3) (b).

(b) "Ordinary and necessary expenses" does not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating child support.

(4) Other income. Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal-living expenses.

(5) Unemployment; underemployment. If the court finds that either parent is voluntarily unemployed or underemployed, it shall estimate the income that parent would otherwise have and shall impute to that parent that income; the court shall calculate child support based on that parent's imputed income. In determining the amount of income to be imputed to a parent who is unemployed or underemployed, the court should take into consideration the specific circumstances of the parent to the extent known, including such factors as the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors in the case. The court may take into account the presence of a young or physically or mentally disabled child necessitating the parent's need to stay in the home and therefore the inability to work. Incarceration may not be treated as voluntary unemployment in establishing or modifying child support orders.

(6) Preexisting child-support obligation. The amount of child support actually being paid by a parent pursuant to an order for child support of other children shall be deducted from that parent's "gross income." If a parent is

legally responsible for and is actually providing child support for other children, but not pursuant to an order of child support, a deduction for an "imputed preexisting child-support obligation" may be made from that parent's gross income. The imputed preexisting child-support obligation shall be that amount specified in the schedule of basic child-support obligations based on that parent's unadjusted gross income and the number of other children for whom that parent is legally responsible. "Other children" means children who are not the subject of the particular child-support determination being made. If the proceeding is one to modify an existing order of child support, no deduction should be made for other children born or adopted after the initial order of child support was entered, except for child support paid pursuant to another order of child support.

(7) Health- care coverage/Cash medical support.

(a) Medical support in the form of health care coverage and/or cash medical support shall be ordered provided that health care coverage is available to either parent at a reasonable cost and/or cash medical support is considered reasonable in cost. The health care coverage must be "accessible" to the children, as that term is defined in subsection (c).

(b) Cash medical support may be ordered in addition to healthcare coverage. Cash medical support does not have to be a stand-alone amount. Cash medical support for uninsured medical expenses can be allocated between the parents.

(c) Definitions.

(1) Cash medical support. Cash medical support is an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.

(2) Health care coverage. Health care coverage includes fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage under which

medical services could be provided to the dependent child(ren).

(3) Reasonable cost. Cash medical support or the cost of health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed 10% of his or her gross income.

(4) Accessible. Health care coverage shall be deemed "accessible" if ordinary medical care is available to the children within a 100-mile radius of their residence.

(d) The actual cost to provide health care coverage for the child(ren) shall be added to the "basic child-support obligation" and shall be divided between the parents in proportion to their adjusted gross income in the percentages indicated on the Child-Support Guidelines form (Form CS-42).

(e) The amount to be added to the "basic child-support obligation" and inserted in Line 6 ("Health Care Coverage Costs") of the Child-Support Guidelines form (Form CS-42) shall be the pro rata portion of the health care coverage cost attributable to the child or children who are the subject of the support order, which shall be calculated by dividing the total health care coverage cost actually paid by, or on behalf of, the parent ordered to provide the coverage by the total number of persons (adult and/or children) covered and then multiplying the result by the number of children who are the subject of the support order.

(f) After the "total child-support obligation" is calculated and divided between the parents in proportion to their "monthly adjusted gross income," the amount added pursuant to subsection (e) shall be deducted from the obligor's share of the total child-support obligation, provided the obligor actually pays the health care coverage cost. If the obligee is actually paying the cost, no further adjustment is necessary.

(g) If, at any time while a child-support order providing for ahealth care coverage adjustment is in effect, the health care coverage is allowed to lapse, is terminated, or

otherwise no longer covers the children for whose benefit the order was issued, the court (i) may find the amount deducted from the obligor's child-support obligation therefor to be an arrearage in the obligor's total child-support obligation; (ii) may find the obligor liable for medical expenses that would otherwise have been covered under the health care coverage; and/or (iii) may enter such other order as it shall deem appropriate.

(8) Child-care costs. Child-care costs, incurred on behalf of the children because of employment or job search of either parent, shall be added to the "basic child-support obligation." Child-care costs shall not exceed the amount required to provide care from a licensed source for the children, based on a schedule of guidelines developed by the Alabama Department of Human Resources. Before the Alabama Department of Human Resources implements any revision to the schedule of child-care-cost guidelines, it shall provide the administrative director of courts ("the ADC") a copy of the revised schedule. The ADC shall, as soon as reasonably practicable thereafter, disseminate the revised schedule to all circuit and district court judges and clerks and the Family Law Section of the Alabama State Bar. The clerk shall maintain the current schedule in his or her office, shall make it available for review, and shall provide copies of it on request, at the customary cost for copies of documents.

(9) CREDIT FOR THIRD PARTY PAYMENT TO CHILDREN.

(i) Social Security Retirement, Survivor's, or Disability Insurance benefits, Veteran's benefits, Railroad Retirement or any other third party payments paid for the children based on the support obligor's earnings record or other eligibility requirement attributable to the support obligor, shall be credited against that parent's support obligation, for so long as it is being received by the support payee, as follows:

(1) Determine the total child support obligation.

(2) Determine the monthly benefit amount that is attributable to the obligor and that the support recipient

receives for the children and then subtract that amount from the total child support obligation.

(a) If the children's obligor-based benefit exceeds the total support amount, then no additional support amount should be ordered.

(b) If the children's obligor-based benefits are less than the obligor's total support amount, then the difference between the benefits received for the children and the total support amount becomes the ordered obligation.

(ii) The following payments to **the children** by a third party shall not be credited towards the support obligor's child support obligation:

(1) Payments which are not based on the support obligor's earnings record or other eligibility requirement attributable to the support obligor;

(2) Any payments due to the disability of the child;

(3) Any payment received in excess of the amount of child support owed to the **children**;

(4) Any payment received by the child shall not be credited against arrearages that accrued before the receipt of the obligor's benefits;

(5) Social Security Income benefits paid to the child;

(6) Adoption subsidy paid to adoptive parents of a special needs child pursuant to sections 26-10-20 et seq. of the Code of Alabama. **(10) Split custody.** In those situations where each parent has primary physical custody of one or more children, support shall be computed in the following manner:

(a) Compute the support the father would owe to the mother for the children in her custody as if they were the only children of the two parties; then

(b) Compute the support the mother would owe to the father for the children in his custody as if they were the only children of the two parties; then

(c) Subtract the lesser child-support obligation from the greater. The parent who owes the greater obligation should be ordered to pay the difference in child support to the other parent, unless the court determines, pursuant to other provisions of this rule, that it should deviate from the guidelines.

(C) Determination of recommended child-support obligation.

(1) Basic child-support obligation. The basic child-support obligation shall be determined by using the schedule of basic child-support obligations. The category entitled "combined adjusted gross income" in the schedule means the combined monthly adjusted gross incomes of both parents. "Adjusted gross income" means gross income less preexisting child-support obligations, less preexisting periodic alimony actually paid by a parent to a former spouse. For combined adjusted gross-income amounts falling between amounts shown in the schedule, the lower value shall be used if the combined adjusted gross income falls less than halfway between the amounts shown in the schedule. Where the combined adjusted gross income falls halfway or more than halfway between two amounts, the higher value shall be used. The category entitled "number of children due support" in the schedule means children for whom the parents share joint legal responsibility and for whom child support is being sought. The court may use its discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels or exceeds the uppermost levels of the schedule.

(2) Computation of child support. A total child-support obligation is determined by adding the basic child-support obligation, work-related child-care costs, and health care coverage costs. The total child-support obligation shall be divided between the parents in proportion to their adjusted gross incomes. The obligation of each parent is computed by multiplying the total child-support obligation by each parent's percentage share of their combined adjusted gross

income. The custodial parent shall be presumed to spend his or her share directly on the child.

(3) Rounding. All dollar amounts used in child-support calculations under this rule, including the recommended child-support order, shall be rounded to the nearest dollar, and all percentages shall be rounded to the nearest one percent.

(4) Additional amounts for child support. In addition to the recommended child-support order, the court may order additional amounts for extraordinary medical, dental, and educational expenses if (i) the parties have in writing agreed to these amounts or (ii) the court, upon reviewing the evidence, determines that these amounts are in the best interest of the children and states its reasons for ordering these additional amounts.

(D) Schedule of basic child support obligations. A schedule of basic child support obligations appears as an appendix to this Rule 32.

(E) Standardized child-support guidelines form, child-support-obligation income statement/affidavit form, and child-support guidelines notice of compliance form. A standardized Child-Support Guidelines form (Form CS-42 as appended to this rule), a Child-Support-Obligation Income Statement/Affidavit form (Form CS-41 as appended to this rule), and a Child-Support Guidelines Notice of Compliance (Form CS-43 as appended to this rule) shall be filed in each action to establish or modify child-support obligations and shall be of record and shall be deemed to be incorporated by reference in the court's child-support order. The form, content, and numbering schemes of the Child-Support Guidelines form, the Child-Support-Obligation Income Statement/Affidavit form, and the Child-Support Guidelines Notice of Compliance form shall be prescribed by the ADC.

(F) Income statements. Income statements of the parents shall be verified with documentation of both current and past earnings. Suitable documentation of current earnings includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current

earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period or shall be supplemented with other documentation as the court directs. Intentional falsification of information presented on the Child-Support-Obligation Income Statement/Affidavit form shall be deemed contempt of court. Documentation of earnings used in preparing the Child-Support-Obligation Income Statement/Affidavit form shall be maintained by the parties and made available as directed by the court.

(G) Review of guidelines.

The Advisory Committee on Child-Support Guidelines and Enforcement (hereinafter "the Committee"), appointed by the Supreme Court, shall, at least once every four years, review the child-support guidelines and the schedule of basic child-support obligations to ensure that their application results in appropriate child-support determinations. Any recommendations concerning the child-support guidelines and/or the schedule of basic child-support obligations shall be reduced to writing and sent by the chairman of the Committee to the clerk of the Supreme Court for review by the Supreme Court. Any proposed changes to the child-support guidelines and/or the schedule of basic child-support obligations that are approved by the Supreme Court shall be sent by the clerk of the Supreme Court to the ADC for distribution to the trial courts.

Proposed Comments

Rule 32 was amended effective _____, to address certain issues and changes to the federal regulations that govern child support.

In subsection (A) "award" was replaced with "order" to be consistent with the terminology used in federal child support regulations. See 45 C.F.R. § 302.56.

Subsection (A)(2) was amended to require the amount of support that would have been required under the guidelines to be provided to the court. See 45 C.F.R. § 302.56(g).

In subsections (A)(3)(c) "award" was replaced with "order" to be consistent with the terminology used in federal child support regulations. See 45 C.F.R. § 302.56.

Subdivision (A)(3)(f) was added to clarify that addressing the children's health care needs is an adequate basis to modify a child support order. See 45 CFR 303.8(d).

Subsection (A)(4) was amended to change "health insurance" to "private or public health care coverage", provide that the children's health care needs can be addressed through health care coverage, cash medical support, or both, to add the language "that can be obtained for the children", and to delete "group" to be consistent with federal child support regulations. See 45 C.F.R. § 302.56(c)(2) and 45 C.F.R. § 303.31(b)(1)(i).

Subsection (B)(2)(a) was amended to add "Veterans benefits," to the definition of gross income to clarify that these benefits can be included as income to calculate child support. See *Goldman v. Goldman*, 197 So.3d 487 (Ala.Civ.App.2015).

In subsection 32(B)(5), the factors that should be considered when determining voluntary underemployment or unemployment were changed to be consistent with the requirements in federal child support regulations. See 45 C.F.R. § 302.56(c)(1)(iii). Incarceration may no longer be treated as voluntary unemployment when establishing or modifying child support. See 45 C.F.R. § 302.56(c)(3).

In subsection (B)(6) "award" was replaced with "order" to be consistent with the terminology used in federal child support regulations. See 45 C.F.R. § 302.56.

In subsections (B)(7)(a) and (B)(7)(b), "insurance" was replaced with "health care coverage". See 45 C.F.R. § 302.56 and § 303.31.

In subsection (B)(7)(c)(1), "insurance" remains to be consistent with 45 C.F.R. 303.31(a)(1).

In subsection (B)(7)(c)(2), the definition of health insurance was expanded to public and private health care coverage. See 45 C.F.R. §303.31(a)(2).

In subsection (B)(7)(c)(3), "private" and "For purposes of applying the 10% standard, the cost is the cost of adding the child or children to existing coverage or the difference between self-only and family coverage, whichever is greater" were deleted to comply with federal child support regulations. See 45 C.F.R. § 303.31(a)(3).

In subsection (B)(7)(c)(4) "insurance" was replaced with "health care coverage". See 45 C.F.R. § 302.56 and § 303.31.

In subsection (B)(7)(d) "of a premium" was deleted and "insurance benefits" changed to "health care coverage" to be consistent with federal child support regulations. See 45 C.F.R. § 302.56 and § 303.31.

In subsection (B)(7)(e) "insurance" was replaced with "health care coverage" and "medical insurance premium" was replaced with "health care coverage cost" to be consistent with federal child support regulations. See 45 C.F.R. § 303.31.

In subsection (B)(7)(f) "insurance" was replaced with "health care coverage" and "premium" changed to "cost" to be consistent with federal child support regulations. See 45 C.F.R. § 303.31.

In subsection (B)(7)(g) "insurance" was replaced with "health care coverage". See 45 C.F.R. § 302.56 and § 303.31.

A new subdivision (9) of subsection (B) was added to allow the obligor to receive credit for certain third party payments made directly to the payee. Subsection (B)(9)(i) is based on Section 3.07 [Social Security Benefit Credit] of the State of Michigan child support guidelines with the addition of credit for payments from other third parties such as Railroad Retirement benefits.

Subsection (B)(9)(i) is consistent with current Alabama case law. In *Goldman v. Goldman*, 197 So.3d 487 (Ala.Civ.App.2015), the Alabama Court of Civil Appeals held that the former husband's veteran's disability benefits were to be considered as income for purpose of calculating his child-support obligation. A noncustodial parent cannot be required to pay child support when social security payments received by child based on parent's disability exceeds guideline amounts. *Self v. Self*, 685 So.2d 732 (Ala.Civ.App.1996). The obligor is also entitled to a credit against his obligation when a child receives benefits based on the obligor's retirement benefits. *Adams v. Adams*, 107 So.3d 194 (Ala.Civ.App.2012). Notwithstanding, if the third party payment to the child is stopped for any reason, the child support owed by the payee remains the amount of the existing child support order. For example, if a child is receiving a third party payment from Social Security which terminates when the child reaches the age of 18, the obligation of the obligor to pay the court-ordered child support will remain in effect until the child reaches the age of majority.

The exclusions for credit enumerated in subsection (B)(9)(ii) reflect current Alabama law. Alabama has consistently held that credit is not allowed for a benefit that a child receives based on the work history of someone other than the obligor. *Hebert v. Stephenson*, 574 So.2d 835 (Ala.Civ.App.1990). See also the court's comments regarding child support credit based on the child's own disability. See, *Hebert* at 837. The exclusion of credit for SSI benefits in subsection (B)(9)(ii)(4) is consistent with current law. *Brazeal v. Brazeal*, 756 So.2d 889 (Ala.Civ.App.1999). Also, the exclusion of credit for Social Security Income benefits in subsection (B)(9)(ii)(5) is consistent with *Lightel v. Myers*, 791 So.2d 955 (Ala.Civ.App.2000), holding that a parent should not get

credit for the SSI benefits payable to the child as a "supplement to income" for the child based on the child's disability, as was clarified by the court in *Adams v. Adams*, 107 So.3d 194 (Ala. Civ. App. 2012), which held that credit could be given to a parent whose child received Social Security retirement benefits based on the parent's works history and, thus, is a "substitute income source". Likewise, the exclusion of credit for adoption subsidy pay in subsection (B)(9)(ii)(6) is consistent with current law because the adoption subsidy is not a "substitute for an income source," but rather is supplemental to the adoptive parents' income. *W.R. v. C.R.*, 75 So.3d 159 (Ala.Civ.App.2011).

Former subdivision (9) of subsection (B) became new subdivision (10).

In subsection (C)(2), "insurance" was replaced with "health care coverage". See 45 C.F.R. § 302.56 and § 303.31.

In subsection (C)(4) "awards" was replaced with "amounts" and "make" and "making" was replaced with "order" and "ordering". These changes were made to be consistent with the terminology used in federal child support regulations. See 45 C.F.R. § 302.56.

Subsection (E) was amended to comply with 45 C.F.R. § 302.56(g) and require that a Child-Support Guidelines form (Form CS-42 as appended to this rule), a Child-Support-Obligation Income Statement/Affidavit form (Form CS-41 as appended to this rule), and a Child-Support Guidelines Notice of Compliance (Form CS-43 as appended to this rule) be filed in each action to establish or modify child-support, including actions in which there is a stipulation of child support that is not in compliance with the guidelines.