

Draft Includes Changes from Aug. 26, 2016 Meeting

Note: This credit should be added as Rule 32 (A) (1) (g)

[make current (g) a new (h)] [ This maintains court's discretion]

### Credit for Third Party Payment to Child

(i) Social Security Retirement, Survivor's, or Disability Insurance benefits, Veterans benefits, Railroad Retirement or any other third party payment paid for the children based on the support payer's earnings record or other eligibility requirement attributable to the support payer, 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 payer 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 payer-based benefit exceeds the total support amount, then no additional support amount should be ordered.
  - (b) If the children's payer-based benefits are less than the payer'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 a child by a third party shall not be credited towards the support payer's child support obligation:

- (1) Payments which are not based on the support payer's earnings record or other eligibility requirement attributable to the support payer;
- (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 child;
- (4) Any payment received by the child shall not be credited against arrearages that accrued before the receipt of the payer's benefits;
- (5) SSI 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.

### **Alabama Comment**

Current subsection (A)(1)(g) was added to permit the court to have the discretion to deviate from the guidelines in certain instances by allowing the payer to receive credit for certain third party payments made directly to the payee. Former subsection (A)(1)(g) became subsection (A)(1)(h). Subsection (A)(1)(g)(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 (A)(1)(g)(i) is consistent with current Alabama case law. 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 735 (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 So3rd 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 payer 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(A)(1)(g)(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 832 (Ala. Civ. App. 1990). See also, the court's comments regarding child support credit based on the child's own disability. See, *Herbert at 837*. The exclusion of credit for SSI benefits in subsection (A)(1)(g)(ii) (4) is consistent with current law. *Brazeal v. Brazeal*, 756 So2d 889 (Ala. Civ. App. 1999). Also, the exclusion of credit for SSI benefits in subsection (A)(1)(g)(ii) (5) is consistent with current law. *Lightel v. Myers*, 791 So. 2d 955 (Ala. Civ. App. 2000). Likewise, the exclusion of credit for adoption subsidy pay in subsection(A)(1)(g)(ii) (6) is consistent with current law. *W.R. v. C.R.*, 75 So.3<sup>rd</sup> 159 (Ala. Civ. App. 2011).