

4. OTHER FACTORS

4.01 Nonparent-Custodians

- 4.01(A) When a nonparent has custody of a child, both parents should pay support. Determine each parent's base support obligation according to that parent's individual income.
- 4.01(B) Parents are responsible for all medical expenses, health care coverage premiums, and child care expenses for children in a nonparent-custodian's care. When possible, apportion those costs between the parents.
- 4.01(C) In determining a parent's net income amount that will be used to calculate support for children in the care of a nonparent, treat the parents' other children-in-common who are not in the nonparent's custody as additional children from other relationships (§2.08(A)).
- 4.01(D) When a child is in a nonparent's physical custody, calculate each parent's support obligation for that child based only on that parent's income, as follows:
- (1) Determine each parent's net income.
 - (2) Calculate each parent's base support obligation separately by treating the other parent's income as zero, and do not apply the Parental Time Offset Equation (§1.04(E)(16) and (§3.03(B))).
 - (3) Calculate medical expense and child care support obligations and require payment from only the parents. When possible, divide them between the parents based on each parent's percentage share of family income.
 - (4) Total a parent's base support, ordinary medical expense, and child care obligations to determine that parent's total support obligation payable to the nonparent.
 - (5) Do not reduce a parent's base support obligation paid to a nonparent-custodian for health care coverage premiums paid by a parent. Allocation of parent-paid premiums between the parents should be handled separately.
 - (6) If the nonparent-custodian purchases health care coverage for the children, add each parent's share of the children's net determinable portion of the premiums paid by the nonparent-custodian to that parent's support payment.

4.02 Incapacitated Parent

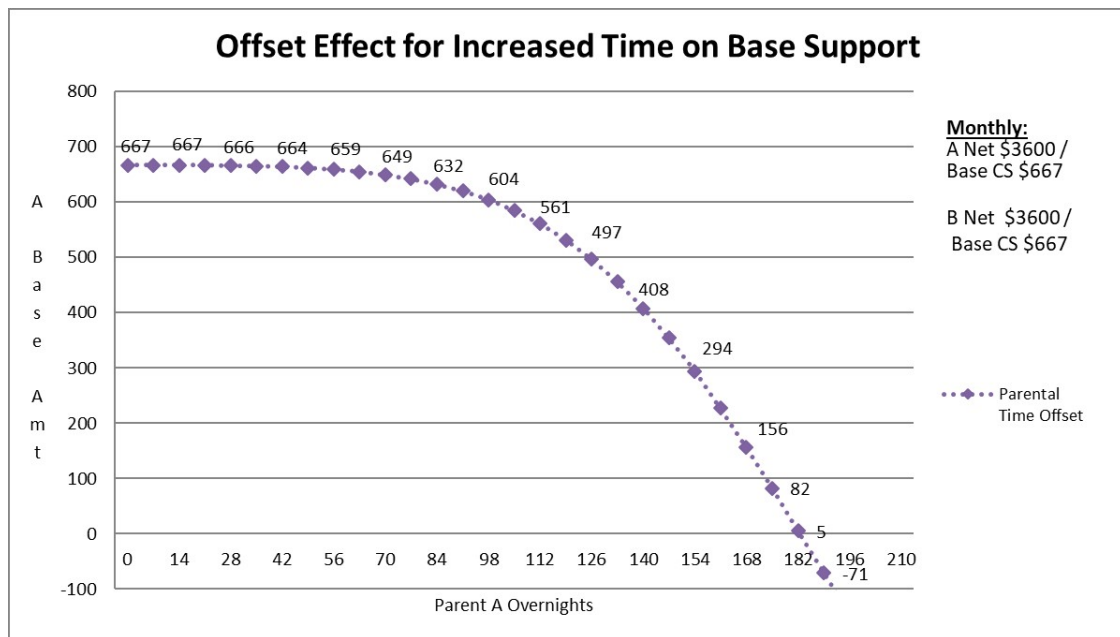
- 4.02(A) "Incapacitation" means the inability to pay the ordered support obligation caused by a parent being temporarily or permanently unable to earn an income for a period that will likely last 180 days or longer and that is due to disability, mental incompetency, serious injury, debilitating illness, or incarceration. Beyond the financial impacts, incapacitation often limits the parent's ability to act in his or her own self-interests. At its onset, the exact duration and full impact of an incapacitating condition will often be uncertain.
- (1) Due to the statutory restriction to retroactively modifying a final judgment or order, an action to modify support should start as soon as possible.

- (2) The court may exercise discretion and grant relief when the actual duration is less than 180 days.
 - (3) Often, a parent's income does not immediately return to what it was before the parent became incapacitated.
 - (4) The court makes the final determination whether a parent is unable to earn an income or otherwise qualifies as incapacitated under this section.
- 4.02(B) The court may set an incapacitated payer's (§4.02(A)) child support obligation at zero for periods that a parent has an inability to pay due to a loss of income and insufficient assets from which to pay support.
- 4.02(C) The court should reduce the effect of the time needed to complete a review and avoid the bar on retroactive modification by including prospective language in support orders that abates support for periods when a payer is incapacitated.
- 4.02(D) It may take one or more years before a parent actually receives benefits or settles a lawsuit. Sometimes funds are paid retroactively to compensate the incapacitated parent for prior months when the parent was unable to work. When there is uncertainty regarding a future outcome or when the payer may receive retroactive compensation or benefits, the court may defer a final decision and preserve flexibility to set an appropriate amount for the period following notice to the parties by entering a temporary order that remains modifiable until uncertainty ends. *Fisher v Fisher*, 276 Mich App 424 (2007).
- 4.02(E) The supplement to this manual contains additional information on Adjusting Incapacitated Parents' Obligations. (2021 MCSF-S 3.04).

4.03 Arrearage Guideline

- 4.03(A) State law requires that Michigan's formula include guidelines to figure payments for overdue support, and when support for a child terminates and arrearages are owed. [MCL 552.519\(3\)\(a\)\(vi\)](#).
 - (1) Federal law requires states to have procedures to increase the amount of payments to include amounts for arrearages. 42 U.S.C. 666(c)(1)(H).
 - (2) State law requires friend of the court offices to use the Arrearage Guideline in setting or adjusting arrearage payments. [MCL 552.517e](#).
 - (3) This Arrearage Guideline is not intended to interfere with the enforcement of past-due support and its collection through concurrent means that do not rely on regular payments.
 - (4) This Arrearage Guideline is not intended to interfere with judicial discretion to set fair and equitable repayment amounts that deviate from the Guideline.
- 4.03(B) Arrearage Payment Calculation
 - (1) Arrearages should be repaid as quickly as possible.
 - (2) If the entire arrearage cannot be paid immediately, the Arrearage Guideline should be used to set a repayment amount where support or fees are owed.

- 3.03(D) The following graph demonstrates the balancing effects the Parental Time Offset has on a parent's base support obligation as the child spends more time with one parent.



3.04 Adjusting Incapacitated Parents' Obligations

- 3.04(A) Temporary orders may set an appropriate payment amount based on the present ability to pay, and adjust the charges when a future outcome is known. 2021 MCSF 4.02.
- 3.04(B) Because incapacitation indicates that a parent's ability to pay has substantially changed to the extent that the support order may need modification, the friend of the court office should quickly initiate a review of the child support obligations pursuant to [MCL 552.517\(1\)\(f\)](#). The FOC office may initiate a review when the incapacitation could last less than 180 days or when the length of incapacitation is difficult to determine.
- (1) The office is not required to conduct a review when:
 - (a) An incapacitated payer's support order is set at zero,
 - (b) The payer has documented assets or a source of income that could be used to comply with the order, or
 - (c) The support order contains prospective language that abates support for periods when a payer is incapacitated.
 - (2) In addition to reviewing an order when a parent becomes incapacitated, the friend of the court office should conduct a review when the parent's financial circumstances change (e.g., social security, insurance, settlements, proceeds from lawsuits, returns to work, etc.), or when a payer is released from incarceration.
- 3.04(C) A time when a payer is incarcerated does not depend on being sentenced to 180 days confinement or more. When a payer is arrested and held without bail in county jail, it is hard to know whether the payer will be released by posting bail, convicted and sentenced to many years in prison, or acquitted. Consider a parent to be incapacitated if the circumstances appear likely that the payer will be unable to earn an income for a period that will likely last 180 days or longer and due to incarceration.

3.04(D) It is often difficult to predict the time it will take a person to recover when the parent is involved in an accident and suffers a serious injury or broken bones. That parent may be unable to work for several months, or be permanently disabled. Consider a parent to be incapacitated if it appears likely that the condition will cause the parent to be unable to earn an income for a period that will likely last 180 days or longer due to disability, mental incompetency, serious injury, debilitating illness, etc.

3.04(E) To avoid retroactive modification and to reduce the need to review and modify an order, the court may include prospective language that abates support when a support payer is incapacitated that is similar to the following.

When friend of the court becomes aware that payer's condition that meets the definition of incapacitation as defined in the current or subsequent Michigan Child Support Formula, monthly support charges shall abate and are temporarily reduced to zero effective the date the friend of the court office provides notice of the abatement to the parties and to the court. Support charges shall be reinstated effective 60 days after the incapacitation ends. The office shall provide notice of reinstatement to the parties and to the court that specifies the date charges will be effective.

Either party may object to the abatement or reinstatement by filing a written objection with the court within 21 days following when the notice was filed, or by filing a motion. If a timely objection is received, the friend of the court shall either set the objection for hearing or complete a support review with an effective date no earlier than the date of filing of that notice.

Based on a motion by either party or a recommendation following a review by the friend of the court, the amount abated may be later corrected based on the parties' incomes or ability to pay during the abatement period.

3.05 Crediting Government Insurance Program Dependent Benefits

3.05(A) A parent's income includes dependent benefits from government insurance programs as provided in 2021 MCSF 2.01(I)-(K). Only the children's dependent benefits paid to the support recipient based on the support payer's earnings record that were counted as the payer's income may be used to reduce the payer's support obligation as outlined in 2021 MCSF 3.07. A payer may not receive credit for benefits paid for the children based on another person's earnings record, or that are not counted as the payer's income.

3.05(B) Dependent benefits paid for the care of additional children not in common with the other parent are not considered as a parent's income.

3.05(C) Benefits Paid on a Support Payer's Earnings Record.

- (1) When calculating a support obligation, the payer's income includes that parent's disability or retirement benefits, as well as any dependent benefits paid for the children-in-common based on the payer's earnings record.
- (2) After the payer's total support obligation is calculated, subtract the monthly benefit amount that the recipient receives for the children based on the payer's earnings record. If the benefit exceeds the support obligation, no additional amount should be ordered paid as child support. If the obligation exceeds the dependent benefit, the payer should be ordered to pay the difference as child support.