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81-6-203 Determination of gross income for child support -- Imputing income to a parent.

- (1)
 - (a) Each parent shall provide verification of current income to the court or administrative agency.
 - (b) Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year, unless the court finds the verification is not reasonably available.
 - (c) Verification of income from records maintained by the Department of Workforce Services may be substituted for pay stubs, employer statements, and income tax returns.
- (2)
 - (a) To calculate gross income of a parent, the court or administrative agency may include:
 - (i) prospective income of the parent, including income from earned and nonearned sources, such as salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, Social Security benefits, worker compensation benefits, unemployment compensation, income replacement disability insurance benefits, and payments from nonmeans-tested government programs; and
 - (ii) income imputed to the parent as described in Subsection (6).
 - (b) Income from earned income sources is limited to the equivalent of one full-time 40-hour job.
 - (c) If and only if during the time before the original support order, the parent normally and consistently worked more than 40 hours at the parent's job, the court may consider this extra time as a pattern in calculating the parent's ability to provide child support.
- (3)
 - (a) The court or administrative agency shall use historical and current earnings to determine whether an underemployment or overemployment situation exists.
 - (b) The office may not treat incarceration of at least six months as voluntary unemployment in establishing or modifying a support order.
- (4)
 - (a) To calculate income from self-employment or operation of a business, the court or administrative agency:
 - (i) shall calculate gross income from self-employment or operation of a business by subtracting necessary expenses required for self-employment or business operation from gross receipts;
 - (ii) shall review income and expenses from self-employment or operation of a business to determine an appropriate level of gross income available to the parent to satisfy a child support award; and
 - (iii) may only deduct those expenses necessary to allow the business to operate at a reasonable level from gross receipts.
 - (b) Gross income determined under this Subsection (4) may differ from the amount of business income determined for tax purposes.
- (5) When possible, the court or administrative agency shall determine the average monthly gross income for each parent by:
 - (a) calculating the gross income of each parent on an annual basis; and
 - (b) dividing the annual gross income for each parent by 12.
- (6)
 - (a) The court or administrative agency may not impute income to a parent unless the parent stipulates to the amount imputed, the parent defaults, or, in contested cases, a hearing is held

and the court or administrative agency enters findings of fact as to the evidentiary basis for the imputation.

- (b) If income is imputed to a parent, the court or administrative agency shall base income upon employment potential and probable earnings considering, to the extent known:
 - (i) employment opportunities;
 - (ii) work history;
 - (iii) occupation qualifications;
 - (iv) educational attainment;
 - (v) literacy;
 - (vi) age;
 - (vii) health;
 - (viii) criminal record;
 - (ix) other employment barriers and background factors; and
 - (x) prevailing earnings and job availability for persons of similar backgrounds in the community.
- (c) If a parent has no recent work history or a parent's occupation is unknown, the court or administrative agency may impute an income to that parent at the federal minimum wage for a 40-hour work week.
- (d) To impute a greater or lesser income, the court or administrative agency shall enter specific findings of fact as to the evidentiary basis for the imputation.
- (e) The court or administrative agency may not impute income to a parent if any of the following conditions exist and the condition is not of a temporary nature:
 - (i) the reasonable costs of child care for the parents' minor child approach or equal the amount of income the custodial parent can earn;
 - (ii) a parent is physically or mentally unable to earn minimum wage;
 - (iii) a parent is engaged in career or occupational training to establish basic job skills; or
 - (iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.
- (7) Notwithstanding Subsection (2), the court or administrative agency may not include the following sources of income when calculating the gross income of a parent:
 - (a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program;
 - (b) benefits received under a housing subsidy program, the Job Training Partnership Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, SNAP benefits, or General Assistance;
 - (c) other similar means-tested welfare benefits received by a parent;
 - (d) the earned income of a child who is the subject of a child support award; or
 - (e) except as otherwise provided in Subsection (8), the benefits to a child in the child's own right, such as Supplemental Security Income.
- (8)
 - (a) The court or administrative agency shall credit, as child support, the amount of social security benefits received by a child due to the earnings of the parent on whose earning record the social security benefits are based by crediting the amount against the potential obligation of that parent.
 - (b) The court or administrative agency may consider other unearned income of a child as income of a parent depending upon the circumstances of each case.