

# **CHILD SUPPORT GUIDELINES: THE NEXT GENERATION**

**Oregon State Bar Family Law Section Annual Conference  
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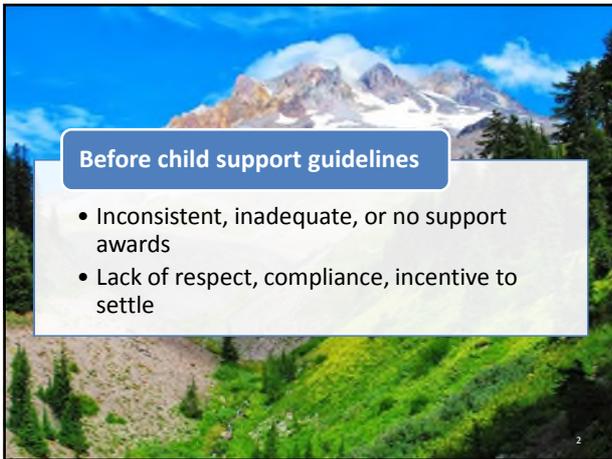
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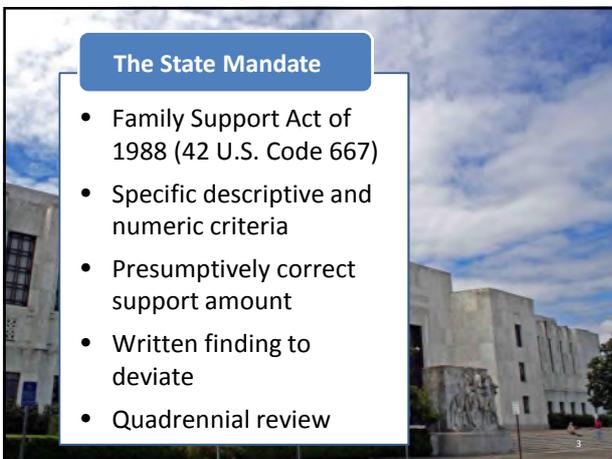
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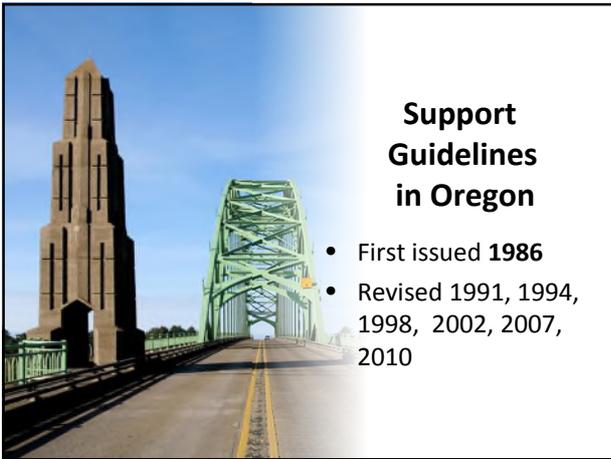
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### Support Guidelines in Oregon

- First issued **1986**
- Revised 1991, 1994, 1998, 2002, 2007, 2010

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### Support Guidelines in Oregon

- **Income shares model**  
The child is entitled to benefit from the income of both parents to the same extent that the child would have benefited had the family unit remained intact or if there had been an intact family unit consisting of both parents and the child.  
  
Both parents should **share in the costs** of supporting the child **in the same proportion as each parent's income bears to the combined income** of both parents. ORS 25.275(2)

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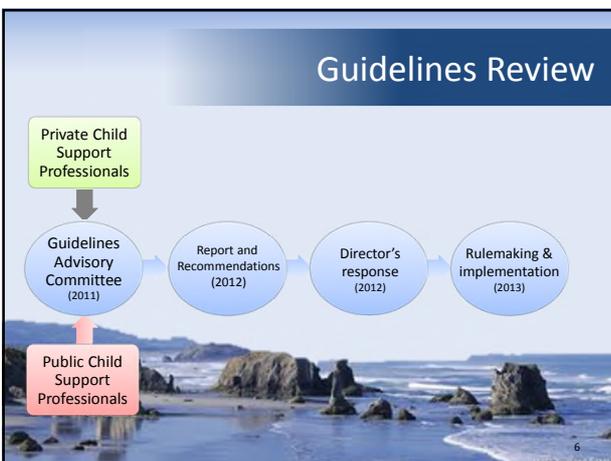
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Oregon Department of Justice  
**Oregon Child Support Program**  
 Supporting Parents to Support Children

Information based on who you are:  
 Parents and Families | Employer Resources | Child Support Professionals

Oregon Child Support Guidelines Calculator

Exception to Minimum Order  
 Do the parent have a valid reason to pay less than a minimum order amount of \$100?  Yes  No

Guideline Support Amounts

	Income	Amount
Cash Child Support for Minor Children	\$77.00	\$ 0.00
Cash Child Support for Children Attending School	288.00	\$ 0.00
Cash Medical Support for Minor Children	0.00	\$ 0.00
Cash Medical Support for Children Attending School	0.00	\$ 0.00
<b>Total Child Support</b>	365.00	\$ 0.00

Is there a valid reason to adjust the guideline amounts shown above?  Yes  No

Parent Care Expenses:  (How to pay the parent costs for their own health care coverage, if not available, enter \$0.00)  
 Cash Support for Health Care Coverage (for the past 12 months):  (How to pay the parent costs for their own health care coverage, if not available, enter \$0.00)  
 Cash Support for Health Care Coverage (for the past 12 months):  (How to pay the parent costs for their own health care coverage, if not available, enter \$0.00)

	Overights with Marital	Overights with Marital	Remaining Overights
5	283	0	
5	283	0	

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**CHILD SUPPORT CALCULATION SUMMARY**  
 oregonchildsupport.gov

This calculation summary is not an order. It is a summary of the type and amount of support that could be ordered based on this calculation. An individual's actual obligation can only be established by court or administrative order in accordance with the laws of Oregon. For the actual terms of the judgment, see the judgment and money award.

The monthly guideline support amount for Homer is:

Support for the minor children	\$ 577.00
Support for the children attending school	\$ 289.00
Cash medical support	\$ 0.00
Private health care coverage for the children not to exceed	N/A
<b>The total monthly guideline support amount is:</b>	<b>\$ 866.00</b>

The monthly guideline support amount for Marge is:

Support for the minor children	\$ 0.00
Support for the children attending school	\$ 0.00
Cash medical support	\$ 0.00
Private health care coverage for the children not to exceed	\$ 200.00
<b>The total monthly guideline support amount is:</b>	<b>\$ 0.00</b>

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**Income**

More flexibility in using imputed and actual income, or a combination of both

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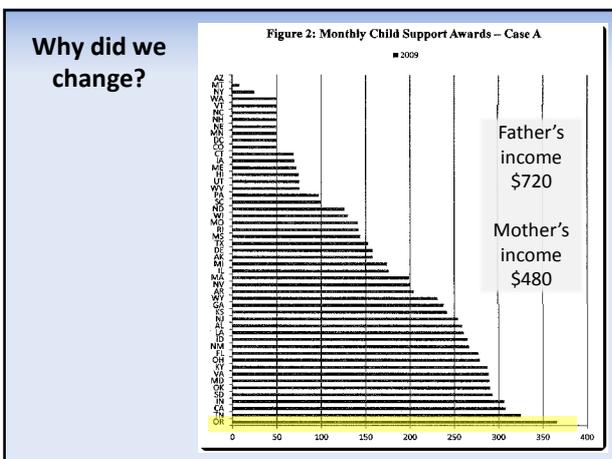
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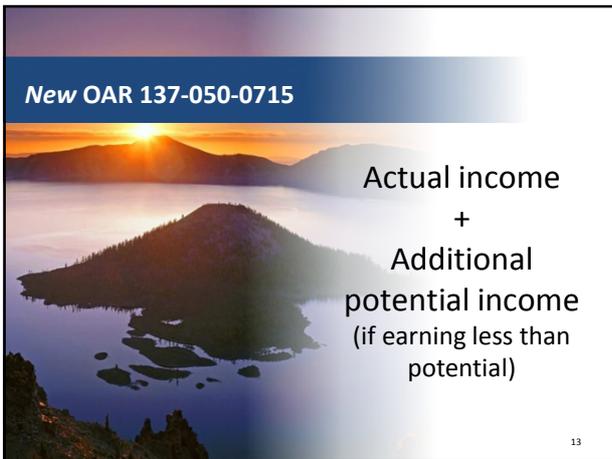
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**New OAR 137-050-0715**



Actual income  
 +  
 Additional potential income  
 (if earning less than potential)

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**What is the parent's potential income?**

- **Personal factors**  
 Work history, qualifications, education, health, employment potential
- **Community factors**  
 Job opportunities and earnings levels
- **Any other relevant factors**
- Potential income may be **from any source**

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Determining potential income with the **Oregon Labor Market Information System**  
<http://www.qualityinfo.org>



**Regional Information**

Select a region to view information about the local economy.

**Jobs & Careers**

**Current Job Openings**

SELECT ONE OR MORE OCCUPATIONAL GROUPS:

ALL OCCUPATIONS  
 Management  
 Business and Financial Operations  
 Computer and Mathematical  
 Architecture and Engineering  
 Life, Physical, and Social Science  
[View Job Openings](#)

**Region 6 Occupations**

Sorted by: Priority | Annual Openings

Occupation	2010 Employment	2009 Employment	2010 Growth	2010 Replace	2013 Total	2013 Salary
Retail Salespersons	1,258	1,320	17	37	54	\$25,078
Cashiers	918	1,019	10	44	54	\$23,175
Customer Support Representatives, Including First-Line Technicians	908	1,137	15	30	44	** \$21,551
Truck Drivers, Heavy and Tractor-Trailer	797	527	14	27	41	\$28,340
Warehouse Workers	506	583	8	27	35	** \$25,076

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### When to use minimum wage?

- Parent actually earns minimum wage
- Parent doesn't earn minimum wage, but could
- Custodial parent receives TANF
- Not enough information about parent's income history to make a determination of actual or potential income

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### On the calculator

**Income**

Enter each parent's **gross income**. [less](#)

Gross income includes monthly salary and wage amounts before any deductions, but may include income from other sources.  
Helpful hints:  
To determine monthly wages:

- Multiply weekly income by 52 and divide by 12.
- Multiply income paid every two weeks by 26 and divide by 12.
- Multiply income paid twice a month by 2.
- Oregon's minimum wage is \$1551.33 per month.
- [See OAR 137-050-0715](#).
  - For definition of income see section (1).
  - For list of what is not income see section (5).
  - For information about potential income and unknown income see sections (3) and (7).

Enter the amount of spousal support **owed** to each parent **by anyone**. [more](#)

Enter the amount of spousal support each parent **owes to anyone**. [more](#)

Enter each parent's **union dues**. [more](#)

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### More income changes

- Reduce the non-joint child credit by pro-rating the total obligation (and restore the term *non-joint child*)
- Allow a non-joint child deduction for an 18-year-old Child Attending School attending high school and living at home
- Deduct parent's own health insurance cost whether or not it is required to cover the children

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**New OAR 137-050-0735(2)**

“...Only actual costs paid by a parent or caretaker for child care that can be documented and determined may be used.”

*Subsidized costs are no longer included.*

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**Change to former OAR 137-050-0735(1)**

~~The adjustment is equal to the average monthly child care expense less any state or federal child care tax credit.~~

The 2013 guidelines **no longer account for child care tax credits.**

(Don't confuse child care tax credits with the dependent exemption.)

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**Child care limits are updated to current Department of Human Services figures**

**Table 1: Maximum Allowable Child Care Costs by Provider Location**

Age of Child	Cities of Portland, Bend, Eugene, Corvallis, Springfield, Monmouth, Ashland Maximum Per Child	All Other Oregon or Out of State Locations Maximum Per Child
Newborn to 1 year	\$900	\$673 <b>695</b>
1 year to 3 years	\$894	\$557 <b>575</b>
3 years to 6 years	\$705	\$435 <b>475</b>
6 years and older	\$698	\$410 <b>460</b>

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**The higher-cost alternative**

Group Area A  
 LICENSED RATE MAXIMUMS

	Registered Family Rate (RFM)			Certified Family Rate (CFM)			Certified Center Rate (CNT)			
	1-62 Hourly	63-135 Part-time	136-215 Monthly	1-62 Hourly	63-135 Part-time	136-215 Monthly	1-62 Hourly	63-135 Part-time	136-215 Monthly	
Infant	\$3.00	\$420	\$560	\$4.25	\$645	\$840	Infant	\$4.50	\$675	\$900
Toddler	\$3.00	\$398	\$530	\$4.00	\$599	\$799	Toddler	\$3.90	\$671	\$894
Preschool	\$3.00	\$375	\$500	\$4.00	\$516	\$688	Preschool	\$3.85	\$529	\$705
School	\$3.00	\$371	\$494	\$4.00	\$490	\$653	School	\$4.30	\$524	\$698
Special Need	\$3.00	\$420	\$560	\$4.25	\$645	\$840	Special Need	\$4.50	\$675	\$900

Zip Codes for Group Area A:  
 Portland, Eugene, Corvallis, Springfield, Bend, Monmouth and Ashland areas

97004	97005	97006	97007	97008	97009	97010	97013	97015	97019	97022	97023
97024	97027	97028	97030	97031	97034	97035	97036	97041	97045	97055	97060
97062	97064	97068	97070	97080	97086	97106	97109	97112	97113	97116	97119
97123	97124	97125	97132	97133	97135	97140	97149	97201	97202	97203	97204
97205	97206	97209	97210	97211	97212	97213	97214	97215	97216	97217	97218
97219	97220	97221	97222	97223	97224	97225	97227	97229	97230	97231	97232
97233	97236	97239	97242	97248	97266	97267	97268	97292	97330	97331	97333
97339	97351	97361	97371	97376	97401	97402	97403	97404	97408	97408	97454
97455	97477	97478	97482	97520	97525	97701	97702	97707	97708	97709	

[apps.state.or.us/caf/fsm/07cc-f.htm#RateCharts](http://apps.state.or.us/caf/fsm/07cc-f.htm#RateCharts)

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**Medical support (everything old is new again)**

Combine both parents' ability to pay for health insurance to determine if the coverage is "reasonable in cost"

Apportion health insurance costs between the parents

Limit cash medical to what ORS 25.323 requires

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### Reasonable in cost

**Before July 1, 2013:**  
 Each parent had a separate health insurance obligation at 4% of that parent's income.

**Now:**  
 The parents have a shared obligation for health insurance at 4% of the parents' combined income.

Minimum wage? Reasonable cost is still zero.  
*see OAR 137-050-0750(5)*

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### What cost is *reasonable*?

Homer: \$4000 x 4% = \$160  
 + Marge: \$2500 x 4% = \$100

**Reasonable cost     \$260**

The parents will be ordered to provide coverage at or below \$260.

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### On the worksheet

	Parents		combined
	Homer	Marge	
<b>4a</b> Out-of-pocket health care coverage costs for the children only. Enter each parent's premium cost, even if \$0. Enter "none" if appropriate insurance is not available.	\$200.00	\$120.00	
<b>1e</b> Adjusted income. Subtract non-joint child deduction (line 1d) from income after additions and subtractions (line 1b). Sum the parents' adjusted incomes in the "combined" column. Do not reduce below zero.	\$4,000.00	\$2,500.00	
<b>4c</b> Reasonable cost for health care coverage. Enter the lesser of 4% of each parent's adjusted income (1e) or available income (4b). Enter \$0 if the parent has income at or below the minimum wage. Round to the nearest dollar.	\$160.00	\$100.00	\$ 260.00

- Homer's policy is reasonable in cost. \$200 < \$260.
- Marge's policy is reasonable in cost. \$120 < \$260.
- Both policies together cost \$320. Because that is more than \$260, the cost to cover the children under *both* policies is not reasonable.

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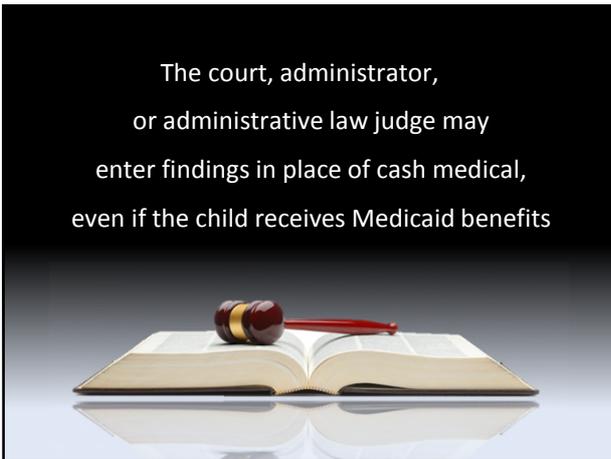
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**Health insurance cost is not reasonable**

4. Health care coverage for joint children		Homer	Marge
<b>4a</b> Out-of-pocket health care coverage costs for the children only. Enter each parent's premium cost, even if \$0. Enter "none" if appropriate insurance is not available.		\$400.00	none
<b>4c</b> Reasonable cost for health care coverage. Enter the lesser of 4% of each parent's adjusted income (1e) or available income (4b). Enter \$0 if the parent has income at or below the minimum wage. Round to the nearest dollar.		\$160.00	\$100.00
<b>4d</b> Who has coverage available at a reasonable cost? Compare the parents' (and caretaker's, if any) premiums (4a) to the combined reasonable in cost amount (4c). Indicate by name who can provide coverage: one parent, either parent, both parents, one parent and caretaker, etc. Only include a parent with income at or below the minimum wage if that parent's coverage is available at no cost.			combined \$ 260.00
<b>8f</b> Cash medical support obligation. If a parent has a cash support obligation for minor children (8b), enter the parent's cash medical support amount from 5a.		\$160	\$0

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**5. CASH MEDICAL SUPPORT**

5a Cash medical support election		election y/n/c	
Enter 'y' for yes if no appropriate health care coverage is available (line 4f). Cash medical will be included. Enter 'n' for no if appropriate health care coverage is available or if a finding will be included in the order explaining why cash medical should not be included. Cash medical will be excluded. Enter 'c' for contingent if the obligated parent will pay cash medical support whenever the obligated parent does not provide health care coverage. Contingent cash medical will be included.		n	
5b Cash medical support amount		Homer	Marge
If line 5a is 'y', enter each parent's reasonable cost amount (line 4c).			
If line 5a is 'n', enter \$0.		0	0
If line 5a is 'c', enter each parent's reasonable cost amount (line 4c).			

If either parent provides health care coverage at a reasonable cost, the worksheet will show cash medical support only if you ask for "contingent cash medical support."

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### Parenting Time Credit



Replace the current credit formula with a graduated curve.

Eliminate the 25% parenting-time threshold and the 1.5 multiplier

Provide a credit for even minimal time, increasing as parenting time nears 50%-50%

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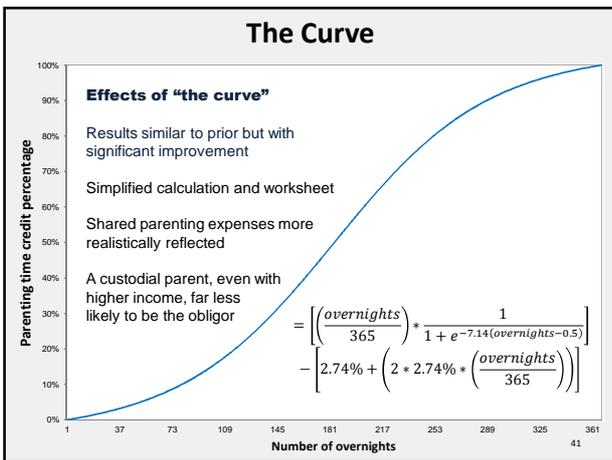
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### Computing parenting time credit (minor children only)

Homer and Marge's combined basic support: \$1,469

Homer: 85 overnights (23.29% PT) = 11.47% credit.

Credit amount: \$1469 x 11.47% = **\$168.49**

Marge: 280 overnights (76.71% PT) = 88.53% credit.

Credit amount: \$1469 x 88.53% = **\$1300.51**

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- Apply parenting time to minor children only
- Treat 18-year-olds in high school and living with a parent as minors (i.e., include in parenting time credit) *see OAR 137-050-0700(4)*
- Pay support equally to all children.



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**Parenting Time Credit: Bart Goes to College**

Homer and Marge's combined basic support: \$1,469

**Minor children's portion =  $\$1469 \times 2/3 = \$979.33$**

Homer: 85 overnights (23.29% PT) = 11.47% credit.  
Credit amount:  $\$979.33 \times 11.47\% = \$112.33$

Marge: 280 overnights (76.71% PT) = 88.53% credit.  
Credit amount:  $\$979.33 \times 88.53\% = \$867.00$



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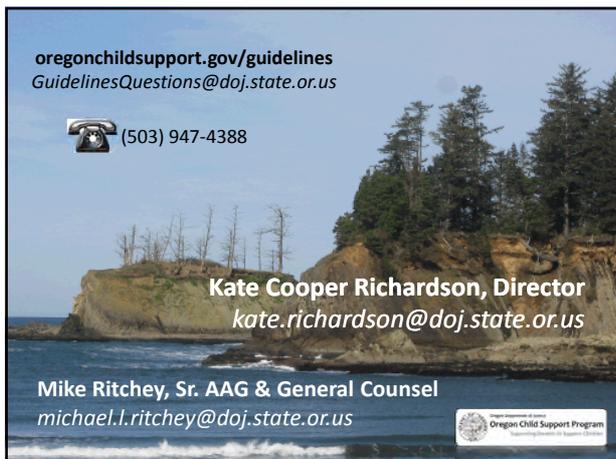
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[oregonchildsupport.gov/guidelines](http://oregonchildsupport.gov/guidelines)  
[GuidelinesQuestions@doj.state.or.us](mailto:GuidelinesQuestions@doj.state.or.us)

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## Guideline Rules

<u>Rule</u>	<u>Number</u>
General Provisions	137-050-0700
Calculating Support	137-050-0710
Income	137-050-0715
Adjusted Income	137-050-0720
Basic Support Obligation	137-050-0725
Parenting Time Credit	137-050-0730
Child Care Costs	137-050-0735
Social Security & Veterans' Benefits	137-050-0740
Self-Support Reserve	137-050-0745
Medical Support	137-050-0750
Minimum Order	137-050-0755
Rebuttals	137-050-0760
Agreed Support Amount	137-050-0765
Scale	Appendix

**137-050-0700**  
**General Provisions**

(1) ORS 25.270 through ORS 25.280 require that child support be calculated according to a formula. The formula is known as the "Oregon Child Support Guidelines" ("guidelines" or "guideline") and is contained in OAR 137-050-0700 through OAR 137-050-0765 and in the "Obligation Scale" which is located in the appendix.

(2) Any change to the guidelines applies to all calculations prepared on or after the effective date of the change. The court, administrator, or administrative law judge may issue a final order based on a calculation prepared prior to the guidelines change. However, if support is recalculated after the new guidelines become effective, the calculation must be prepared using the new guidelines.<sup>1</sup>

(3) Changes to these rules do not constitute a substantial change in circumstances for purposes of modifying a support order.

(4) Calculate support for a Child Attending School who is age 18, living with a parent, and attending high school in the same manner as support for a minor child.<sup>2</sup>

Stat. Auth.: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

Effective date: July 1, 2013

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<sup>1</sup> Commentary: This language, new for 2013, is intended principally as a clearer statement of the existing policy. All support, past, present, and future, is computed using the current guidelines. An action in progress need not be delayed solely to recalculate support that was computed based on prior guidelines if, for example, it simply awaits the court's signature. However, if support needs to be recomputed in that action for another reason, the recomputation must be completed using the current guidelines.

<sup>2</sup> Commentary: An 18-year-old child living at home and finishing high school, though technically an adult, is likely to have substantially the same economic impact on the parents' households as s/he did immediately before turning 18. Therefore, for purposes of the guidelines, such a child is treated as a minor. This means, for instance, that parenting time credit is computed for a child in this circumstance, and that a parent receives an income deduction for a similarly situated non-joint child.

## **137-050-0710**

### **Calculating Child Support**

(1) To calculate the guideline support amount:

(a) Determine each parent's income as provided in OAR 137-050-0715.

(b) Determine each parent's adjusted income and percentage share of adjusted income as provided in OAR 137-050-0720.

(c) Determine each parent's income available for support ("available income") by deducting the self-support reserve from the parent's adjusted income as provided in OAR 137-050-0745.

(d) Determine the basic support obligation and each parent's share, of the basic support obligation as provided in OAR 137-050-0725.

(e) Add to each parent's basic support obligation the parent's share of child care costs as provided in OAR 137-050-0735.

(f) Determine each parent's medical support obligation as provided in OAR 137-050-0750. Add each parent's share of health care coverage costs to the parent's obligation. Round cash medical support, if any, to the nearest dollar.

(g) Determine each parent's parenting time credit as provided in OAR 137-050-0730.

(h) Credit each parent's cash child support obligation for:

(A) parenting time as provided in OAR 137-050-0730,

(B) the parent's allowed out-of-pocket costs for child care as provided in OAR 137-050-0735,

(C) Social Security or Veterans benefits as provided in OAR 137-050-0740, and

(D) the parent's out-of-pocket health insurance costs for the child as provided in OAR 137-050-0750.

(i) Determine whether the parent will be ordered to pay cash child support or cash medical support for minor children as follows:

(A) Only the parent with the greater support after credits as determined in section (1)(h) of this rule may be ordered to pay cash child support and, if applicable, cash medical support, for the minor children, except as provided in subsection (B).

(B) If a minor child lives with a caretaker or is in state care, both parents may be ordered to pay cash child support and, if applicable, cash medical support.

(j) Determine whether the minimum order applies and apply any necessary increase as provided in OAR 137-050-0755.

(k) If the parent will be ordered to pay cash child support for minor children, determine the amount by dividing each parent's cash child support obligation by the total number of joint

children and multiplying the result by the number of joint minor children. Round the result to the nearest dollar.

(L) Determine the cash child support obligation for joint Children Attending School by dividing each parent's cash child support obligation by the total number of joint children and multiplying the result by the number of joint Children Attending School. Round the result to the nearest dollar.<sup>1</sup>

(m) Allocate cash medical support to joint minor children and joint Children Attending School in the same manner provided for cash child support in sections (1)(k) and (1)(L) of this rule.

(2) Round all dollar figures to the nearest penny, except as otherwise provided. Example: \$12.34. Round all percentages to the nearest one-hundredth of one percent. Example: 12.34%.

(3) If all of the minor children for whom support is being calculated live with a caretaker other than a parent or the children are in the care or custody of the state, and the action is determining the support obligation of only one parent, consider only that parent's information. For the second parent in these single-parent calculations, use the same income, spousal support, union dues, parent's own health care coverage cost, and non-joint children as for the parent whose obligation is being calculated. Include the caretaker's child care costs, if any. Do not include any other information for the "other parent".

(4) The obligations to pay cash child support and cash medical support, and to provide health care coverage under this rule together constitute the guideline child support obligation and are presumed just and appropriate, subject to the agreed support amount in OAR 137-050-0765 and rebuttal as provided in OAR 137-050-0760.

Stat. Auth.: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

Effective date: July 1, 2013

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<sup>1</sup> The guidelines are based on economic data derived from families with minor children (see [http://oregonchildsupport.gov/laws/guidelines\\_archive/psi\\_guidelines\\_review\\_2006.pdf#page=24](http://oregonchildsupport.gov/laws/guidelines_archive/psi_guidelines_review_2006.pdf#page=24)), but with some variation (e.g., omitting the parenting time credit) are also used to calculate appropriate support amounts for a Child Attending School as defined in ORS 107.108. The presumption that the amounts are appropriate may be rebutted as provided in ORS 25.280 and OAR 137-050-0760.

## 137-050-0715

### Income

(1) "Income" means the actual or potential gross income of a parent as determined in this rule. Actual and potential income may be combined when a parent has actual income and is unemployed or employed at less than the parent's potential.

(2) "Actual income" means a parent's gross earnings and income from any source, including those sources listed in section (4), except as provided in section (5).

(3) "Potential income" means the parent's ability to earn based on relevant work history, including hours typically worked by or available to the parent, occupational qualifications, education, physical and mental health, employment potential in light of prevailing job opportunities and earnings levels in the community, and any other relevant factors. A determination of potential income includes potential income from any source described in section 4 of this rule.<sup>1</sup>

(4) Actual income includes but is not limited to:

(a) Employment-related income including salaries, wages, commissions, advances, bonuses,

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<sup>1</sup> Commentary: Some employers will not allow an employee to work a full 40 hour week, which may not be customary to the occupation, but is customary to the employer. In these types of circumstances the fact-finder must determine whether to base the parent's earning ability on a regular 40-hour workweek, the customary work schedule for the parent's occupation, or work opportunities in the parent's current employment situation.

Example: A parent works 32 hours per week at a restaurant. Additional hours are unavailable. Other employment opportunities in the area for which the parent is qualified offer similar hours and wages. It would be inappropriate to base the parent's income on a 40 hour work week.

Other parents may have suffered reduced earning ability. For example, it would be inappropriate to attribute historical full-time income to a public school teacher who has been laid off and now works part-time as a substitute teacher – assuming there are limited employment opportunities in the area for a teacher of those credentials and work history.

On the other hand, it might be appropriate to attribute income based on historical earnings to a person who has left a lucrative professional career because, for example, a spouse earns sufficient income, or in order to work in a preferred field but at a lower rate of pay. Because the goal is to determine earning ability, this imputation should not simply apply the amount formerly earned. The review should include consideration of the currently available employment opportunities in that field in the parent's area, the condition of the parent's professional skills and/or equipment, and the time since the parent last worked in that occupation.

This provision also contemplates seasonal employment. A seasonally employed parent may have significant earnings for a portion of the year and then receive unemployment compensation for a portion of the year. Under those circumstances, the parent's earning ability might be based on an annual review of their income, divided over a twelve-month period.

If a parent's occupational history is known but the parent's income is not, the Oregon Employment Department's Oregon Labor Market Information System may be of use in assessing employment opportunities and potential earnings. See generally <http://www.qualityinfo.org/olmisj/OlmisZine>. For a statewide listing of earnings by profession, see <http://www.olmis.org/olmisj/PubReader?itemid=00000053>. For regional wage information tables, see <http://www.qualityinfo.org/olmisj/PubReader?itemid=00003174>.

dividends, recurring overtime pay,<sup>2</sup> severance pay, pensions, and honoraria;<sup>3</sup>

(b) Expense reimbursements, allowances,<sup>4</sup> or in-kind payments to a parent, to the extent they reduce personal living expenses;

(c) Annuities, trust income, including distribution of trust assets, and return on capital,<sup>5</sup> such as interest and dividends;

(d) Income replacement benefit payments including Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, and Department of Veterans Affairs disability benefits;

(e) Inheritances,<sup>6</sup> gifts and prizes, including lottery winnings; and

(f) Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, minus costs of goods sold, minus ordinary and necessary expenses required for self-employment or business operation, including one-half of the parent's self-employment tax, if applicable. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses,<sup>7</sup> investment tax credits, or any other business expenses determined by the fact finder to be inappropriate or excessive for determining gross income.<sup>8</sup>

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<sup>2</sup> Commentary: Overtime is included to the extent it is regularly occurring. Sporadic overtime is not generally included. Overtime is calculated based on an annual amount, prorated over a twelve month period. The calculation of annual overtime takes into consideration those occupations that customarily have seasonal overtime. With evidence of a recent voluntary reduction in overtime hours, a fact finder may determine an annual average of overtime based on historic accumulation of overtime.

<sup>3</sup> Commentary: Some employers contribute to medical benefits beyond the cost of health care coverage. This employer contribution should be included as gross income to the person. Any cash benefits a person may receive from not enrolling in, or "opting out" of, a health care coverage plan are considered income.

Employer contributions to profit sharing, such as unexercised stock options, should be treated as gross income only if such contributions are capable of ready conversion into cash (i.e., liquid).

<sup>4</sup> Commentary: Allowances, such as a car, home or cellular phone allowance provided by an employer, may be considered income to the extent they reduce living expenses consistent with section 4(f). Example: If an employer provides the employee a cellular phone subsidy of \$100 per month, that amount could be included in income. If, however, the cellular phone were restricted to business use, it would not be considered in determining income. In calculating income for an active duty service member, income includes housing and subsidy allowances and special pay allowances.

<sup>5</sup> Commentary: A return on capital, including interest and dividends, can be considered regardless of whether the return is paid out to the party or reinvested to increase the value of the capital investment.

<sup>6</sup> Commentary: Inheritances are separately listed beginning in 2013 based on *In re Marriage of Leif*, 246 Or App 511, 266 P3d 165 (2011).

<sup>7</sup> Commentary: The straight-line method (regular depreciation) deducts an equal amount of depreciation each year. Accelerated depreciation front-loads the depreciation, realizing less income. If the property is sold and new property purchased and accounted for using accelerated depreciation, lower income results on an ongoing basis for tax purposes. See *IRS Publication 936*.

<sup>8</sup> Commentary: Determining gross income for persons involved in the operation of a business can be

(5) Child support, food stamps, Social Security or Veterans benefits received on behalf of a child in the household, adoption assistance, guardianship assistance, and foster care subsidies are not considered income for purposes of this calculation.<sup>9</sup>

(6) If a parent's actual income is less than the parent's potential income, the court, administrator, or administrative law judge may impute potential income to the parent.<sup>10</sup>

(7) If insufficient information about the parent's income history is available to make a determination of actual or potential income, the parent's income is the amount the parent could earn working full-time at the minimum wage in the state in which the parent resides.<sup>11</sup>

(8) Potential income may not be imputed to:

(a) A parent unable to work full-time due to a verified disability;

(b) A parent receiving workers' compensation benefits;

(c) An incarcerated obligor as defined in OAR 137-055-3300; or

(d) A parent whose order is being temporarily modified under ORS 416.425(13).

(9) To determine monthly income when the employee is paid:

(a) Weekly, multiply the weekly earnings by 52 and divide by 12.

(b) Every two weeks, multiply the bi-weekly earnings by 26 and divide by 12.

(c) Semimonthly (twice per month), multiply the semimonthly earnings by 2.<sup>12</sup>

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difficult. The problem is best addressed by the discovery process and by the fact finding authority of the decision maker.

Undistributed corporate income is included in determining the gross income of the parties (*see Perlenfein and Perlenfein*, 316 Or 16 (1993)). However, the gross income thus calculated may be rebutted in whole or in part if there is evidence that such income is not actually available to the parent.

<sup>9</sup> Commentary: Adoption assistance, foster care, and guardianship subsidy payments are intended to cover the cost of care for children who may have extraordinary education, emotional or physical needs. The parents are still obligated to provide for the basic needs of the child.

<sup>10</sup> Commentary: Whether a person is receiving his/her potential income must be determined on a case-by-case basis. *See Matter of Marriage of LaFavor*, 151 Or App 257, 949 P.2d 313 (1997). The drafters also note that under ORS 107.135(3) as interpreted in *Hogue and Hogue*, 115 Or App 697 (1992), even a good-faith reduction in income may not constitute a substantial change in circumstance for purposes of modifying a support judgment where the parent fails to prove that the reduced income results in reduced ability to pay. .

<sup>11</sup> Commentary: Where the parent's state of residence is unknown, use Oregon minimum wage.

<sup>12</sup> Commentary: Irregular income, such as seasonal, commission, or overtime work, or volatile investment income, may be computed based on a representative period, such as one or two years, with the goal of accurately estimating ongoing ability to pay support.

(10) Notwithstanding any other provision of this rule, if the parent receives Temporary Assistance for Needy Families, the parent's income is presumed to be the amount which could be earned by full-time work at the minimum wage in the state in which the parent resides. This income presumption is solely for the purposes of the support calculation and not to overcome the rebuttable presumption of inability to pay in ORS 25.245.<sup>13</sup>

(11) As used in this rule, "full-time" means 40 hours of work in a week except in those industries, trades or professions in which most employers, due to custom, practice or agreement, utilize a normal work week of more or less than 40 hours in a week.<sup>14</sup>

Stat. Auth.: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

Effective date: July 1, 2013

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<sup>13</sup> Commentary: TANF recipients are presumed unable to pay support (ORS 25.245). However, it is necessary to impute some income to all parties (even parents who receive public assistance). Income is imputed for purposes of calculating the relative responsibility of each parent and not to order a TANF recipient to pay support.

<sup>14</sup> Commentary: This definition of "full time work" is adapted from that used by the Employment Department. This rule does not contemplate the term "underemployed."

**137-050-0720**  
**Adjusted Income**

(1) To determine “adjusted income,” begin with income, as determined in OAR 137-050-0715, and then:

(a) Deduct mandatory contributions to a union or other labor organization;

(b) Deduct the parent's cost for the parent's own health insurance.<sup>1</sup>

(c) Deduct the parent’s monetary spousal support obligation to this or a different party, whether ordered in the same or a different proceeding, and whether paid or not;<sup>2</sup>

(d) Add the amount of court-ordered monetary spousal support owed to the parent, whether ordered in the same or a different proceeding, by this or a different party and whether paid or not; and

(e) Subtract the non-joint<sup>3</sup> child deduction described in section (2) of this rule.

(2) A parent is entitled to a non-joint child income deduction when the parent is legally responsible for the support of a child not included in the current calculation.

(a) To qualify for the non-joint child deduction, the minor child must reside in the parent’s household or the parent must be ordered to pay ongoing support for that child.

(b) A child attending school, as defined in ORS 107.108 and OAR 137-055-5110, qualifies the parent for the non-joint child deduction only if the parent is ordered to pay ongoing support for the child attending school, or as provided in subsection (c).<sup>4</sup>

(c) A child who has reached the age of 18 but is not yet 19, lives with a parent and attends high school, qualifies that parent for the non-joint child deduction, whether or not the child has qualified as a Child Attending School under ORS 107.108.

(d) A stepchild only qualifies a parent for the non-joint child deduction if the parent is ordered to pay ongoing support for the stepchild.

(e) To calculate a parent's non-joint child deduction<sup>5</sup>:

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<sup>1</sup> Commentary: Beginning in 2013, deduct the parent’s own health care coverage premium whether or not the parent must be covered in order to cover the child.

<sup>2</sup> Commentary: In a proceeding (e.g., a dissolution) in which both child support and spousal support are being determined, spousal support must be determined first so the parents' incomes may be adjusted accordingly.

<sup>3</sup> Commentary: Non-joint children were referred to as "additional children" from 2010 until July 2013.

<sup>4</sup> Commentary: A child who lives at home and attends high school but turns 18 during the final year of school probably has an economic impact on the parents' households similar to that of a child in the same circumstances but only 17 years old.

<sup>5</sup> Commentary: The 2013 non-joint child deduction calculation helps to reverse an overestimation of the costs of raising the parent's non-joint children as compared to the children in the present calculation. The new method retrieves a single-income support amount for *all* the parent's children, and then prorates the

(A) Apply the adjustments described in subsections 1(a)-1(d) of this rule to the parent's income;

(B) Using the parent's income after the adjustments in section 2(e)(A) of this rule and total number of joint and non-joint children, reference the obligation scale and determine the applicable support amount; and

(C) Divide the result by the total number of the parent's joint and non-joint children and multiply by the number of non-joint children to determine the amount of the non-joint child deduction.

(3) Determine each parent's percentage share of adjusted income by dividing the parent's adjusted income by the parents' combined adjusted income.

Stat. Auth.: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

Effective date: July 1, 2013

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portion of that amount for the non-joint children to determine the amount of the deduction. This abbreviated calculation method is still imperfect because 1) the single-income calculation tends to produce higher support amounts (and thus, a higher non-joint child deduction), 2) it fails to reflect self-support protections the obligor would enjoy with respect to the non-joint child, and 3) it does not account for the obligor's medical support obligation to the non-joint child. Though it remains only a rough estimate, the new method substantially reduces the over-crediting from the 2010 method.

## **137-050-0725**

### **Basic Support Obligation**

(1) The scale of basic child support obligations, found in the appendix to these rules, must be used in every support calculation made under ORS 25.270 to 25.280.<sup>1</sup> The scale is based on

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<sup>1</sup> Commentary: The Child Support Program is required by ORS 25.270 and 45 CFR 302.56 to review the Child Support Guidelines every four years.

In March 2006, Policy Studies, Inc. (PSI) completed a study analyzing nationwide data on the cost of raising children. The updated obligation scale was developed from new economic estimates of child-rearing expenditures developed by Dr. David Betson for Oregon. The scale is based on expenditures data collected from households in 1998 through 2004 through the Consumers Expenditures Survey (CEX) conducted by the U.S. Bureau of Labor Statistics. The obligation scale also considers 2006 price levels, 2006 federal and state income taxes and FICA, and the 2006 poverty guidelines. The data period considered in the obligation is based on a larger sample, so produces more statistically robust estimates. It covers a range of economic cycles (i.e., the economic boom of the 1990s, the economic recession that began and ended in 2002, and the post-recovery period of today), so is less economically volatile than previous estimates.

In 2010, the Child Support Program asked Oregon's Office of Economic Analysis to review the obligation scale in light of current economic conditions. The Office of Economic Analysis concluded that the 2006 guidelines scale was still sufficiently reliable.

#### **Needs vs. wants**

The scale covers the basic needs of raising a child and does not cover the “wants” of a child. The scale’s drafters realized that extra-curricular activities and other “wants” are common decisions being made when the child support obligation is being calculated, but the scale is based on basic needs only.

#### **Age of the child**

The drafters declined to adopt varying standards for children at different age levels. The guidelines scale incorporates an average of expenses for children from 0 through 17 years old.

Oregon law provides for child support to continue and to be distributed directly to the child if the child is attending school and is over the age of 18 and under the age of 21 years old under ORS 107.108. The scale is derived from data based on children from 0–17 years old. The drafters chose to apply the scale to children in this age group. The presumption in favor of the guideline support obligation may be rebutted under OAR 137-050-0760.

#### **Number of children**

Prior to 2003, this rule provided a formula for determining the amount of support when support is sought for seven or more children. This formula was developed in 1994 to determine a presumed support amount by using a fixed multiplier of 6.6% to the presumed amount for six children for each additional child thereafter. To make the scale easier to use, the drafters applied the formula to the scale and continued the scale out to 10 children. The formula was removed from the rule in 2003.

There are no current data to support a specific 6.6% increase for each additional child after six children. The 1998 PSI study discusses adjustments for the number of children, and reports that the multiplier decreases as the number of children increases because of a reallocation of the adult’s share of expenditures to provide for more children, and each child’s share of expenditures is reduced to accommodate the needs of additional children. In 2007, the scale was adjusted to add support figures for up to ten children, and considered those adjustments discussed in the study that gradually reduce the “needs factor” for each child after six and recognize that there is a point at which additional support is not needed or is no longer affordable. Therefore, the current scale adds 5.6% to the figure for six children for the seventh child, and to that adds 4.2% for the eighth child, and to that adds 2.8% for the ninth child, and to that adds 1.4% for the tenth child. There is no additional support for any child beyond the tenth child.

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### **Key assumptions of the Policy Studies, Inc. guideline review**

The following description of the key assumptions is copied from the June 26, 2006, "State of Oregon Guidelines Review" by Policy Studies Inc., Ch IV, pp. 14 – 16 (available online at [http://oregonchildsupport.gov/laws/guidelines\\_archive/docs/psi\\_guidelines\\_review\\_2006.pdf#page=21](http://oregonchildsupport.gov/laws/guidelines_archive/docs/psi_guidelines_review_2006.pdf#page=21)):

**(1) Guidelines based on net income, then converted to gross income.** As implied above, a table of child support based on obligor net income is developed before converting the tables to gross income. The tables are converted to gross income for three reasons:

- Use of gross income greatly simplifies use of the child support guidelines because it obviates the need for a complex gross-to-net calculation in individual cases;
- Use of gross income can be more equitable because it avoids non-comparable deductions that may arise in making the gross-to-net calculation in individual cases; and
- Use of gross income does not cause child support to be increased when an obligor acquires additional dependents, claims more exemptions, and therefore has a higher net income for a given level of gross income.

In converting the obligation scale to a gross income base, we have assumed that the obligated parent claims two exemptions, which is consistent with the IRS withholding formula for employers. It simulates the standard deduction and one exemption. Because the IRS withholding formula provides the same tax formula for single individuals and head of households, there is no distinction. Similarly, the Earned Income Tax Credit is not considered because it is not advanced to single, qualifying individuals without dependents. In all, this is the most favorable assumption that can be made concerning an obligor's filing status. Obligor's with more exemptions or itemized deductions, would have a slightly higher obligation under an equivalent net income guideline even if the obligee receives the advanced Earned Income Tax Credit. The child tax credit is not considered because it is not advanced and not all families are eligible.

**(2) Tax exemptions for child(ren) due support.** The obligation scale presumes that the obligated parent does not claim the tax exemptions for the child(ren) due support. In computing federal tax obligations, the primary residential parent is entitled to claim the tax exemption(s) for any divorce occurring after 1984, unless the primary residential parent signs over the exemption(s) to the alternate residential parent each year. Given this provision, the most realistic presumption for development of the obligation scale is that the primary residential parent claims the exemption(s) for the child(ren) due child support.

**(3) Income assumed to be taxable.** Because the obligation scale has withholding tables built into it, the design assumes that all income of both parents is taxable.

**(4) Obligation scale does not include expenditures on child care, extraordinary medical expenses, and children's share of health insurance costs.** The obligation is based on economic data that represent estimates of total expenditures on child-rearing costs up to age 18. The major categories of expenditures include food, housing, home furnishings, utilities, transportation, clothing, education, and recreation. Excluded from these figures are average expenditures for child care, children's extraordinary medical care, and the children's share of health insurance. These costs are deducted from the base amounts used to establish the Schedule because they are added to child support obligations as actually incurred in individual cases. Deducting these expenditures from the base amounts avoids double-counting them in the child support calculation.

**(5) Obligation scale includes expenditures on ordinary medical care.** Although expenditures for the children's extraordinary medical care and the children's share of health insurance are to be added to the child support obligation as actually incurred in individual cases, it is assumed that parents will make some expenditures on behalf of the children's ordinary medical expenses (i.e., out-of-pocket expenses not covered by insurance). This includes band-aids, co-pays for doctor's well visits, and over-the-counter medicines. Expenditures on ordinary medical care are \$250 per year per child, which approximates average out-of-pocket expenses nationally.

national data on childrearing expenditures relative to family income. The scale applies regardless of where the parent resides or works.<sup>2 3</sup>

(2) Determine the basic child support obligation by referencing the scale using the number of children for whom support is sought and the combined adjusted income of the parents.

(3) If the combined adjusted gross income of the parents is more than \$30,000 per month, the basic child support obligation is the same for parents with combined adjusted income of \$30,000 per month.<sup>4</sup>

(4) The basic child support obligation for more than ten children is the same as for ten children.<sup>5</sup>

(5) When the parents' combined income falls between two income amounts on the scale, use the lower income amount on the scale to determine the basic child support obligation.

(6) Determine each parent's share of the basic support obligation by multiplying the combined basic support obligation by the parent's percentage share of adjusted income as provided by OAR 137-050-0720. The basic support amount may not exceed the parent's income available

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**(6) Obligation scale is based on average expenditures on children 0 - 17 years.** Child-rearing expenditures are averaged for children across the entire age range of 0 - 17 years. Dr. Betson did not find statistically significant differences in expenditures on younger and older children using the Rothbarth methodology.

**(7) Parenting expenses incurred by the obligated parent are not factored into the obligation scale.**

Since the obligation scale is based on expenditures for children in intact households, there is no consideration given for parenting expenses incurred by the obligated parent. Taking such costs into account would be further complicated by the variability in actual parenting time patterns and the duplicative nature of many parenting expenses (e.g. utilities, home furnishings). Parenting expenses, however, are considered in the worksheet.

<sup>2</sup> Commentary: The scale amounts were originally determined based on net (post-tax) income. Oregon decided to base support on gross income in part to prevent variations in tax filing from biasing the support obligation. To convert the income ranges from net to gross, the scale assumes that the obligated parent claims two exemptions based on the Internal Revenue Service's withholding formula for employers, which uses the standard deduction and one exemption. See also:

[http://oregonchildsupport.gov/laws/guidelines\\_archive/psi\\_guidelines\\_review\\_2006.pdf#page=22](http://oregonchildsupport.gov/laws/guidelines_archive/psi_guidelines_review_2006.pdf#page=22)

<sup>3</sup> Commentary: The obligation scale presumes that the obligated parent does not claim the tax exemptions for the children. The parenting time credit is derived from the basic support obligation, so it effectively assumes the parents share in the benefit of the children's tax exemptions in proportion to each parent's share of parenting time. If the parents claim the children's exemptions in a manner inconsistent with the division of the parenting time credit, and the effect on the support amount renders the guideline amount unjust or inappropriate, a parent may seek a rebuttal as provided in OAR 137-050-0760. The Child Support Program does not provide a calculation resource for determining the tax effects of switching the child tax exemption from one parent to another.

[http://oregonchildsupport.gov/laws/guidelines\\_archive/psi\\_guidelines\\_review\\_2006.pdf#page=23](http://oregonchildsupport.gov/laws/guidelines_archive/psi_guidelines_review_2006.pdf#page=23).

<sup>4</sup> Commentary: The guideline scale only computes support obligations for combined incomes up to \$30,000. If the result is unjust or inappropriate, it may be rebutted as provided in OAR 137-050-0760.

<sup>5</sup> The guideline scale only computes support obligations for up to ten children. If the result is unjust or inappropriate, it may be rebutted as provided in OAR 137-050-0760.

for support as provided in OAR 137-050-0745.

[Link to the appendix \(the scale\):](#)

[http://oregonchildsupport.gov/laws/rules/docs/guidelines\\_scale.pdf](http://oregonchildsupport.gov/laws/rules/docs/guidelines_scale.pdf)

Stat. Auth.: ORS 25.275, 25.280, 180.345

Stats. Implemented: ORS 25.275, 25.280

Effective date: July 1, 2013

**137-050-0730**  
**Parenting Time Credit**

(1) For the purposes of this rule:

(a) “Primary physical custody” means the parent provides the primary residence for the child and is responsible for the majority of the day-to-day decisions concerning the child.<sup>1</sup>

(b) “Split custody” means that there are two or more children and each parent has at least one child more than 50 percent of the time.

(2) If there is a current<sup>2</sup> written parenting time agreement or court order providing for parenting time, calculate each parent's overnights for the minor children<sup>3</sup> as follows<sup>4</sup>:

(a) Determine the average number of overnights using two consecutive years.<sup>5</sup>

(b) Add the total number of overnights the parent is allowed with each minor child and divide by the total number of minor children

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<sup>1</sup> Commentary: A parent may be ordered to pay child support notwithstanding that parent's status as the custodial parent. Under ORS 25.240, a parent may be ordered to pay support attributable to those periods of time when s/he does not have physical custody of the children. *Matter of Marriage of Greenfield*, 130 Or App 632, 635-36 (1994).

<sup>2</sup> Commentary: The word “current” in “a current written parenting time agreement or court order providing for parenting time” acknowledges those situations where the current parenting time situation is not reflected in the last court order or written agreement. For example, assume Mother has custody of the child and Father has a court order for 30% parenting time. At some point, the child goes to live with the Father, and Mother now exercises parenting time. Father seeks a support order, but the existing custody order has never been changed. Pursuant to ORS 25.240, the parent with primary physical custody (now, the Father) may get a support order, regardless of the terms of the last custody order. In this circumstance, the existing custody (or parenting time) order is not “current” and, therefore, would not be used to calculate parenting time for child support. Support is calculated with no shared parenting time until a new written parenting time agreement or court order providing for parenting time is entered.

<sup>3</sup> Commentary: Parenting time is calculated based on minor children and those 18-year-olds attending high school and living with a parent. See ORS chapter 107; *Matter of Marriage of Smith*, 44 Or App 635, 641 (1980); *Matter of Marriage of Miller*, 62 Or App 371, 374 (1983).

<sup>4</sup> Commentary: Where the child support computation will be submitted as part of a petition that includes parenting time, the calculation should reflect the parenting included in the action. This applies primarily to private actions for dissolution (under ORS Chapter 107) and establishing paternity and/or parenting time for unmarried parents (under ORS Chapter 109). The Child Support Program will continue to require a written agreement or court order in order to consider shared parenting time in administrative actions.

<sup>5</sup> Commentary: Parenting time cannot be calculated using speculative data. Since parenting time is calculated based on 365 days in a year, averaged over two consecutive years, practitioners may calculate the number of days spent with the parent for known periods of time (E.g., “The child will spend Memorial Day weekend with the Mother,”: quantifiable as 3 overnights). Unknown or unquantifiable periods of time would not be calculated (E.g., “The child will spend time during the summer months with the Father”: unquantifiable period of time; no overnights can be calculated). The determination of overnights applies to the parenting plan that will be followed while the new support order is in effect.

(c) Notwithstanding the calculation provided in subsections (2)( a) and (2)(b), parenting time may be determined using a method other than overnights if the parents have an alternative parenting time schedule in which a parent has significant time periods where the minor child is in the parent's physical custody but does not stay overnight. For example, in lieu of overnights, 12 continuous hours may be counted as one day. Additionally, blocks of time of four hours up to 12-hours may be counted as half-days, but not in conjunction with overnights. Regardless of the method used, blocks of time may not be used to equal more than one full day per 24-hour period.

(3) If the parents have split custody but no written parenting time agreement, determine each parent's parenting time overnights by dividing the number of minor children with the parent by the total number of children and multiplying by 365.

(4) If there is no current written parenting time agreement or court order providing for parenting time, the parent or party having primary physical custody of the minor child will be treated as having all of the parenting time for that child unless a court or administrative law judge determines actual parenting time.

(5) If the court or administrative law judge determines actual parenting time exercised by a parent is different than what is provided in a written parenting plan or court order, the parenting time overnights may be calculated using the actual parenting time exercised by the parent.<sup>6</sup>

(6) Determine each parent's parenting time credit percentage as follows:

credit percentage =  $1 / (1 + e^{(-7.14 * ((\text{overnights} / 365) - 0.5))}) - 2.74\% + (2 * 2.74\% * (\text{overnights} / 365))$

(a) The precisely computed credit percentage is preferred. However, where this is impractical (for example, when calculating support by hand) an approximate credit percentage can be determined by referencing the table at the end of this rule using the parents' average overnights determined in step 2, 3, or 4, rounding up or down to the nearest whole number of overnights.

(7) To determine the amount of each parent's parenting time credit:<sup>7 8</sup>

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<sup>6</sup> Commentary: A finding of actual parenting time does not alter the written parenting time agreement or court order. If the parties want the written parenting time agreement to reflect the actual parenting time exercised the parties will need to amend the written parenting time agreement through the judicial process or stipulate to a new written parenting time agreement.

<sup>7</sup> Commentary: This rule applies to parents whose child lives with a caretaker or is in state care. The caretaker has no obligation and needs no credit, but a credit is computed for each parent with parenting time.

<sup>8</sup> Commentary: The assumptions underlying the formula include:

- Any parenting time creates some expenses for the parent
- Low levels of parenting time result in low levels of expenses, because there are fewer fixed, duplicated expenses like housing, and do not significantly decrease the expenses of the parent with greater parenting time.
- Higher levels of parenting time increase the likelihood that the parents will incur fixed, duplicated expenses.
- At equal parenting time, parents' expenses are most likely to be equal.

If each parent has the child 50% of the time and parental incomes are equal, no support would be owed.

(a) Determine the minor children's portion of the combined basic support obligation, as determined in OAR 137-050-0725(2), by dividing the combined basic support obligation by the total number of minor children and children attending school and multiply the result by the number of minor children only.

(b) Multiply the result by each parent's parenting time credit percentage.

Stat. Auth.: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

Effective date: July 1, 2013

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However, if each parent has 50% of the parenting time and one parent's income is greater than the other parent's, the parent with the larger income would pay some support. In either case, expenses such as child care or health care coverage could cause the opposite result.

**Table: Parenting time credit percentage by number of overnights**

Overnights	Credit %						
0	0.00%	36	3.19%	72	8.67%	108	17.77%
1	0.07%	37	3.30%	73	8.87%	109	18.09%
2	0.14%	38	3.42%	74	9.07%	110	18.41%
3	0.21%	39	3.54%	75	9.27%	111	18.73%
4	0.28%	40	3.66%	76	9.48%	112	19.06%
5	0.35%	41	3.78%	77	9.68%	113	19.39%
6	0.42%	42	3.91%	78	9.90%	114	19.72%
7	0.49%	43	4.04%	79	10.11%	115	20.06%
8	0.57%	44	4.16%	80	10.33%	116	20.40%
9	0.65%	45	4.30%	81	10.55%	117	20.75%
10	0.72%	46	4.43%	82	10.77%	118	21.10%
11	0.80%	47	4.56%	83	11.00%	119	21.45%
12	0.88%	48	4.70%	84	11.23%	120	21.81%
13	0.96%	49	4.84%	85	11.47%	121	22.17%
14	1.04%	50	4.98%	86	11.70%	122	22.54%
15	1.13%	51	5.12%	87	11.94%	123	22.90%
16	1.21%	52	5.27%	88	12.19%	124	23.27%
17	1.29%	53	5.41%	89	12.43%	125	23.65%
18	1.38%	54	5.56%	90	12.68%	126	24.03%
19	1.47%	55	5.71%	91	12.94%	127	24.41%
20	1.56%	56	5.87%	92	13.19%	128	24.80%
21	1.65%	57	6.02%	93	13.45%	129	25.19%
22	1.74%	58	6.18%	94	13.72%	130	25.58%
23	1.84%	59	6.34%	95	13.98%	131	25.98%
24	1.93%	60	6.51%	96	14.25%	132	26.38%
25	2.03%	61	6.67%	97	14.53%	133	26.78%
26	2.12%	62	6.84%	98	14.80%	134	27.19%
27	2.22%	63	7.01%	99	15.08%	135	27.60%
28	2.32%	64	7.19%	100	15.37%	136	28.01%
29	2.43%	65	7.36%	101	15.66%	137	28.43%
30	2.53%	66	7.54%	102	15.95%	138	28.85%
31	2.64%	67	7.72%	103	16.24%	139	29.27%
32	2.74%	68	7.91%	104	16.54%	140	29.70%
33	2.85%	69	8.09%	105	16.84%	141	30.13%
34	2.96%	70	8.28%	106	17.15%	142	30.56%
35	3.08%	71	8.47%	107	17.46%	143	31.00%

144	31.44%	181	49.24%	218	67.23%	255	81.59%
145	31.88%	182	49.75%	219	67.68%	256	81.91%
146	32.32%	183	50.25%	220	68.12%	257	82.23%
147	32.77%	184	50.76%	221	68.56%	258	82.54%
148	33.22%	185	51.26%	222	69.00%	259	82.85%
149	33.68%	186	51.76%	223	69.44%	260	83.16%
150	34.13%	187	52.27%	224	69.87%	261	83.46%
151	34.59%	188	52.77%	225	70.30%	262	83.76%
152	35.05%	189	53.27%	226	70.73%	263	84.05%
153	35.52%	190	53.77%	227	71.15%	264	84.34%
154	35.99%	191	54.27%	228	71.57%	265	84.63%
155	36.45%	192	54.77%	229	71.99%	266	84.92%
156	36.93%	193	55.27%	230	72.40%	267	85.20%
157	37.40%	194	55.77%	231	72.81%	268	85.47%
158	37.88%	195	56.27%	232	73.22%	269	85.75%
159	38.35%	196	56.77%	233	73.62%	270	86.02%
160	38.83%	197	57.26%	234	74.02%	271	86.28%
161	39.32%	198	57.75%	235	74.42%	272	86.55%
162	39.80%	199	58.25%	236	74.81%	273	86.81%
163	40.29%	200	58.74%	237	75.20%	274	87.06%
164	40.77%	201	59.23%	238	75.59%	275	87.32%
165	41.26%	202	59.71%	239	75.97%	276	87.57%
166	41.75%	203	60.20%	240	76.35%	277	87.81%
167	42.25%	204	60.68%	241	76.73%	278	88.06%
168	42.74%	205	61.17%	242	77.10%	279	88.30%
169	43.23%	206	61.65%	243	77.46%	280	88.53%
170	43.73%	207	62.12%	244	77.83%	281	88.77%
171	44.23%	208	62.60%	245	78.19%	282	89.00%
172	44.73%	209	63.07%	246	78.55%	283	89.23%
173	45.23%	210	63.55%	247	78.90%	284	89.45%
174	45.73%	211	64.01%	248	79.25%	285	89.67%
175	46.23%	212	64.48%	249	79.60%	286	89.89%
176	46.73%	213	64.95%	250	79.94%	287	90.10%
177	47.23%	214	65.41%	251	80.28%	288	90.32%
178	47.73%	215	65.87%	252	80.61%	289	90.52%
179	48.24%	216	66.32%	253	80.94%	290	90.73%
180	48.74%	217	66.78%	254	81.27%	291	90.93%

292	91.13%	329	96.81%				
293	91.33%	330	96.92%				
294	91.53%	331	97.04%				
295	91.72%	332	97.15%				
296	91.91%	333	97.26%				
297	92.09%	334	97.36%				
298	92.28%	335	97.47%				
299	92.46%	336	97.57%				
300	92.64%	337	97.68%				
301	92.81%	338	97.78%				
302	92.99%	339	97.88%				
303	93.16%	340	97.97%				
304	93.33%	341	98.07%				
305	93.49%	342	98.16%				
306	93.66%	343	98.26%				
307	93.82%	344	98.35%				
308	93.98%	345	98.44%				
309	94.13%	346	98.53%				
310	94.29%	347	98.62%				
311	94.44%	348	98.71%				
312	94.59%	349	98.79%				
313	94.73%	350	98.87%				
314	94.88%	351	98.96%				
315	95.02%	352	99.04%				
316	95.16%	353	99.12%				
317	95.30%	354	99.20%				
318	95.44%	355	99.28%				
319	95.57%	356	99.35%				
320	95.70%	357	99.43%				
321	95.84%	358	99.51%				
322	95.96%	359	99.58%				
323	96.09%	360	99.65%				
324	96.22%	361	99.72%				
325	96.34%	362	99.79%				
326	96.46%	363	99.86%				
327	96.58%	364	99.93%				
328	96.70%	365	100.00%				

**137-050-0735**  
**Child Care Costs**

(1) Adjust the support obligation for child care costs paid by either parent or the child's caretaker if the child for whom support is being calculated is disabled or under the age of 13.<sup>1</sup>

(2) Child care costs must be related to the parent's or caretaker's employment, job search, or training or education necessary to obtain a job. Only actual costs<sup>2</sup> paid by a parent or caretaker for child care that can be documented and determined may be used to compute an adjustment under these rules.<sup>3</sup>

(3) Child care costs are allowable only to the extent that they are reasonable and, except as provided in section (4), do not exceed the maximum amounts set out in Table 1.

Table 1: Maximum Allowable Child Care Costs by Provider Location

Age of Child	Cities of Portland, Bend, Eugene, Corvallis, Springfield, Monmouth, Ashland Maximum Per Child	All Other Oregon or Out of State Locations Maximum Per Child
Newborn to 1 year	\$900	\$595
1 year to 3 years	\$894	\$575
3 years to 6 years	\$705	\$475
6 years and older	\$698	\$460

(4) The maximum amounts allowed by the Department of Human Services as shown in the Employment-Related Day Care Allowance tables in OAR 461-155-0150, available on line at [http://arcweb.sos.state.or.us/pages/rules/oars\\_400/oar\\_461/461\\_tofc.html](http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_461/461_tofc.html) or <http://dhsmanuals.hr.state.or.us/EligManual/07cc-f.htm#RateCharts>, may be used when those amounts are greater than the amounts in the abbreviated table in section (3).

<sup>1</sup> Commentary: The child support calculation should reflect the costs incurred by either or both parents, or by a caretaker, so long as those costs meet the criteria set out in this rule.

The 2013 guidelines no longer account for child care tax credits. The credits are speculative; some parents eligible for the credits may not file tax returns. In cases where the parent actually receives a tax benefit that renders the guideline result unjust or inappropriate, a rebuttal of the guideline result may be in order.

<sup>2</sup> Commentary: The 2013 guidelines no longer allow inclusion of the state- or employer-subsidized portion of child care costs because the parent does not actually pay the cost. Example:

The obligee receives an Employment Related Day Care (ERDC) subsidy from the Department of Human Services (DHS). The total cost of day care is \$475, but the obligee receives a \$400 subsidy and has a co-pay of \$75. The figure used in the guidelines calculation is the \$75 co-pay.

<sup>3</sup> Commentary: Future child care costs that are determinable and certain to occur should be included in the guidelines calculation when those future costs are known.

(5) Each parent's obligation for child care costs is that parent's income share percentage as provided by OAR 137-050-0720 multiplied by the total allowed child care costs. A parent's child care cost obligation may not exceed the parent's available income after deducting the parent's basic support obligation.

(6) As used in section 1 of this rule, "disabled" refers to a child who has a physical or mental disability that substantially limits one or more major life activities (for example, self-care, performing manual tasks, walking, seeing, speaking, hearing, eating, sleeping, standing, lifting, bending, breathing, learning, reading, concentrating, thinking, communicating, and working).<sup>4</sup>

Stat. Auth.: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

Effective date: July 1, 2013

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<sup>4</sup> Commentary: For 2013, this list was updated for consistency with changes to [42 USC § 12102](#).

**137-050-0740**

**Social Security and Veterans Benefits**

(1) For the purposes of this rule:

(a) "Apportioned Veterans benefits" means the amount the U.S. Department of Veterans Affairs deducts from an obligated parent's Veterans benefits and disburses to the child or to the child's representative payee; and

(b) "Social Security benefits" refer to those benefits paid on behalf of a disabled or retired obligated parent to a child or a child's representative payee.<sup>1</sup>

(2) The cash child support obligation may be reduced dollar for dollar in consideration of any Social Security or apportioned Veterans benefits; and

(3) The cash child support obligation must be reduced dollar for dollar in consideration of any Survivors' and Dependents' Educational Assistance (Veterans benefit) under 38 U.S.C. chapter 35.

(4) A parent is not entitled to a reduction in support for Veterans or Social Security benefits:

(a) that result from the child's own disability,<sup>2</sup>

(b) for which the obligated parent is the representative payee, or

(c) that do not result from the obligated parent's own disability or retirement, or, in the case of subsection (3), from that parent's military service.

Stat. Auth: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

Effective date: July 1, 2013

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<sup>1</sup> Commentary: If a parent's disability or retirement results in a child receiving Social Security or Veteran's benefits, include the benefits in that parent's column. Include benefits paid to the child based on either parent's disability or retirement, whether you expect that parent to pay or receive support. This is necessary because the calculator has not yet ascertained which parent is the obligated parent (see OAR 137-050-0710(1)(i)). Except where both parents' obligations are being determined for a Child Attending School, a child with a caretaker, or a child in state care, only the disabled or retired obligor's support obligation is ultimately reduced.

<sup>2</sup> Social Security death/survivor benefits and Social Security benefits based on the child's disability are not addressed under this rule because such benefits are not derived from either party to the support order. Death benefits should be treated as income to the child only and should be considered, when appropriate, through rebuttal under OAR 137-050-0760.

**137-050-0745**  
**Self-Support Reserve**

(1) The support calculation must leave an obligated parent enough income to meet his or her own basic needs.<sup>1</sup>

(2) To determine the amount of the parent's income available for support ("available income"), subtract the self-support reserve of \$1117 from the parent's adjusted income;

(3) The parent's total obligation, including the parent's shares of the basic support obligation, child care costs, health insurance, and cash medical support, may not exceed the parent's available income, except as provided in OAR 137-050-0750(7).

(4) The limitation on support described in this rule is reflected in the specific provisions of OAR 137-050-0710 (Calculating Support), OAR 137-050-0725 (Basic Support Obligation), OAR 137-050-0735 (Child Care Costs), and OAR 137-050-0750 (Medical Support).<sup>2</sup>

(5) The amount of the self-support reserve is based on the federal poverty guideline, multiplied by 1.167 to account for estimated taxes. This rule will be reviewed and updated annually to reflect changes in the federal poverty guideline.

Stat. Auth.: ORS 25.275, 25.280, 180.345

Stats. Implemented: ORS 25.275, 25.280

Effective date: July 1, 2013

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<sup>1</sup> Commentary: Research suggests that an obligor is more likely to pay child support if the order is within the obligor's means. A smaller amount of support that is actually paid is of greater value to the child than a higher support order that goes unpaid. Accumulating arrears without ability to pay is a disincentive to paying current support. *see, e.g.,* Margot Bean, *Story Behind the Numbers: Understanding and Managing Child Support Debt*, Information Memorandum 08-05, Office of Child Support Enforcement, available at [http://www.acf.hhs.gov/sites/default/files/ocse/im\\_07\\_04c.pdf](http://www.acf.hhs.gov/sites/default/files/ocse/im_07_04c.pdf)

<sup>2</sup> Commentary: Subsection 1 provides the underlying principle that, notwithstanding the \$100 minimum order, parents are allowed to meet their own subsistence needs before allocating their income to child support, including health care coverage costs. Subsection 3 explains that this includes costs in which the parent is sharing and describes the exception. Subsection 4 explains that the basic rule is implemented throughout the guideline rules.

**137-050-0750**  
**Medical Support**

(1) The basic support obligation (OAR 137-050-0725) includes ordinary unreimbursed medical costs of \$250 per child per year. These costs represent everyday expenses such as bandages, non-prescription medication, and co-pays for doctor's well visits. The basic support obligation does not account for health care coverage costs or for extraordinary medical expenses.<sup>1</sup>

(2) "Cash medical support", as used in OAR 137-050-0700 through 137-050-0765, has the meaning given in ORS 25.321(1).<sup>2</sup>

(3) For purposes of this rule, "to provide" health care coverage means to apply to enroll the child and pay any costs associated with the enrollment, even if the cost to the parent is zero.

(4) For purposes of ORS 25.323, private health care coverage may be "available" to a parent from any source, including but not limited to an employer, spouse, or domestic partner.

(5) Private health care coverage is reasonable in cost if it costs no more than the total of four percent of each parent's adjusted income as determined in OAR 137-050-0720.

(a) The amount calculated for each parent in this section may not exceed that parent's available income after deducting the parent's shares of basic support obligation and child care costs.<sup>3</sup>

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<sup>1</sup> Commentary: Prior to 2013, the "extraordinary medical expenses" clause was generally applied to require the custodial parent to document \$250 per child per year in medical expenses before repayment from the other parent could begin. That practice was not entirely consistent with the [2006 Policy Studies, Inc. report](#) that provided the most recent update to the basic obligation scale. That report was based on research indicating a typical custodial parent incurs, on average, \$250 per year in "ordinary" medical expenses. The amount specifically excludes "extraordinary" medical expenses, such as the uncovered costs of treatment of illness or injury; chronic medical conditions, like asthma or diabetes; orthodontia; medical equipment; and visits to the emergency room. "Ordinary" medical expenses, as characterized in that report, include not only copays for routine doctor visits (checkups) but also the costs for non-prescription medication like bandages and vitamins. It would be unreasonable to require a custodial parent to document all of these routine costs in detail.

The parenting time credit is based on the basic support amount. As described above, the basic support amount includes \$250 per child per year in ordinary medical expenses. Therefore, the parenting time credit assumes that the parents are covering those expenses in proportion to their respective credit amounts.

The 2013 guidelines do not provide for payment of specified extraordinary medical expenses. Where a child incurs extraordinary medical expenses that render the guideline amount inadequate, unjust or inappropriate, the court, administrator, or administrative law judge may order a deviation from the guideline amount.

<sup>2</sup> Commentary: ORS 25.321(1) reads: (1) "Cash medical support" means an amount that a parent is ordered to pay to defray the cost of health care coverage provided for a child by the other parent or a public body, or to defray uninsured medical expenses of the child.

<sup>3</sup> Commentary: If a parent with *income* above the minimum wage has no *available income* as a result of adjustments to income or the self-support reserve, that parent may be ordered to provide health care

(b) The reasonable cost contribution of a parent whose income is at or below the Oregon minimum wage for full-time employment is zero.

(6) A parent with income at or below the Oregon minimum wage for full-time employment may be ordered to provide health care coverage only if it is available at no cost.<sup>4</sup>

(7) Compelling factors may support a finding that health care coverage is reasonable in cost at an amount greater than the amount determined in section 5 of this rule so long as the providing parent has income greater than full-time employment at the Oregon minimum wage.<sup>5</sup>

(8) In determining the cost of private health care coverage, consider only the cost to the parents of covering the children for whom support is sought. To calculate the amount to be considered:

(a) If there is a known cost for self-only coverage for the providing parent, deduct that cost from the cost of family coverage. Divide the remainder by the total number of people covered, excluding the providing parent. Multiply the result by the number of children for whom coverage is sought in the present calculation.<sup>6</sup>

(b) If there is no self-only coverage option or the cost cannot be determined, divide the total cost of coverage by total number of people covered, including the providing parent. Multiply the result by the number of children for whom coverage is sought in the present calculation.

(9) If only one parent has private health care coverage that is appropriate and available under ORS 25.323, that parent must be ordered to provide it.<sup>7</sup>

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coverage, but the other parent will be assessed the entire cost of the coverage.

<sup>4</sup> Commentary: If a parent's income as determined in OAR 137-050-0715 is at or below the minimum wage, that parent may not be ordered to pay *any* cost to provide insurance, even if the other parent can reimburse the full cost.

<sup>5</sup> Commentary: Compelling factors may include but are not limited to continued access to health care for a child with a chronic health condition or a frequent need for medical care, the parents' agreement to continue coverage despite the cost, and minimal difference between the cost determined under sections (5) and the parent's portion of the cost of coverage.

<sup>6</sup> Example: Health care coverage costs \$375 and covers obligor, obligor's spouse, obligor's two non-joint children, and the joint child that is the subject of this calculation. The cost to cover the obligor is \$175. The cost to cover the people other than the obligor is \$200 (\$375 minus \$175). The per-person cost is \$50 (\$200 divided by 4 covered people). The cost to cover the child in this calculation, then, is \$50.

<sup>7</sup> Commentary: In addition to the reasonable in cost standard, ORS 25.323 requires that coverage be "accessible" and not impose unreasonable deductibles or copays. "Accessible" means that the coverage will be available for at least one year, based on the work history of the parent providing the coverage, and that the coverage either does not have service area limitations or the child lives within 30 miles or 30 minutes of a primary care provider who is eligible for payment under the coverage. Whether copays and deductibles are "unreasonable" is for the fact-finder to determine in light of the family's circumstances, such as the child's medical needs, the availability of alternate forms of coverage, and the sufficiency of cash medical support to meet the child's needs.

(10) If both parents have access to appropriate, available private health care coverage, the parent with the greater share of parenting time as determined in OAR 137-050-0730 (Parenting Time Credit) may select which coverage will be ordered.

(a) If the parent with the greater share of parenting time does not select between the parents' coverage, or each parent has exactly 50% or 182.5 overnights of parenting time and the parents do not agree on which policy should be ordered, the policy with the lower out-of-pocket premium cost will be ordered unless the court, administrator, or administrative law judge makes a finding that the more expensive policy should be ordered.

(b) The parents may agree that both parents will be ordered to provide private coverage if both parents have appropriate coverage available so long as the total coverage to be provided is reasonable in cost under sections 5 or 7 of this rule.

(11) If the child lives with a caretaker, both parents are parties to the action, and both parents have appropriate and available private health care coverage, the caretaker may select which coverage will be ordered. If the caretaker does not select between the parents' coverage, the policy with the lower out-of-pocket premium cost will be ordered unless the court, administrator, or administrative law judge makes a finding that the more expensive policy should be ordered.<sup>8</sup>

(12) If neither parent has access to appropriate, available private health care coverage:

(a) One or both parents must be ordered to provide appropriate private health care coverage at any time whenever it becomes available;

(b) The parent with custody of the child may be ordered to provide public health care coverage for the child; and

(c) Either or both parents who are found to have a cash child support obligation as provided in OAR 137-050-0710(1)(k) must be ordered to pay cash medical support,<sup>9</sup> or the order must include a finding explaining why cash medical support is not ordered.<sup>10</sup> The amount of the cash

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<sup>8</sup> Commentary: When the child lives with a caretaker or is in state care and the support obligation is being computed for only one parent under OAR 137-050-0710(3) (the method typically used by the Child Support Program), only that parent's health care coverage is considered. The single-parent calculation method assesses the obligor one-half of the responsibility for the coverage and credits the obligor for the full cost of the premiums. In most cases, this will mean the obligation is reduced by one-half of the cost of coverage. Also note that if another single-parent order is taken for the other absent parent to pay, the parents' medical support obligations are considered independently, without reference to one another. Regardless of the coverage provided by the first obligor, the second obligor's contribution might be made through providing additional coverage, through cash medical support, or by rebuttal of the guideline support amount.

<sup>9</sup> Commentary: Cash medical support is assigned to the state for any month the child receives Medicaid benefits as described in OAR 461-120-0310.

<sup>10</sup> Commentary: The Child Support Program's administrative child support actions under ORS Chapter 416 do not modify or supersede existing provisions entered under ORS 107.106 requiring parents to share the cost of uninsured medical expenses. Amounts a parent pays as cash medical support may

medical support obligation is the lesser of:

(A) four percent of the parent's adjusted income as determined in OAR 137-050-0720,

(B) the parent's available income after deducting the parent's shares of basic support obligation and child care costs, or

(C) zero, if the parent's income is at or below the Oregon minimum wage for full-time employment.

(13) A medical support clause may order an obligor to provide appropriate private health care coverage whenever it is available to the obligor, and to pay cash medical support whenever the obligor does not provide appropriate private health care coverage.

(14) Determine each parent's share of the cost of health care coverage to be ordered under this rule by multiplying the total cost by each parent's percentage share of the parents' combined reasonable in cost limitation, as determined in section 5 of this rule.<sup>11</sup>

(a) If only one parent has income above the minimum wage, that parent is responsible for all health care coverage costs. No share of the cost is apportioned to a parent with income at or below minimum wage.

(15) When enforcing the health insurance provision of a child support judgment entered under this rule, health insurance is reasonable in cost if the premium cost for the child is equal to or less than the amount that was determined reasonable in cost under section 5 of this rule based on both parents' income at the time support was calculated, regardless of whether that cost exceeds either:

(a) The providing parent's individual contribution to the reasonable cost cap, or

(b) The actual cost of insurance allocated to the providing parent under section 14 of this rule.<sup>12</sup>

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offset that parent's obligation for uninsured expenses imposed by the underlying court order judgment unless otherwise noted in that judgment. To the extent that a child's medical needs are being met in some other way, it may be appropriate to include findings in lieu of cash medical support. One such way might be provision under ORS 107.106 for the parents to share in the children's uninsured medical expenses. If a child receives Medicaid funded medical benefits, medical support is assigned to the state, and the state must be served with the action and has the right to object.

<sup>11</sup> Commentary: Include health care coverage costs that will be ordered pursuant to this rule, even if they are not yet being paid. Also, if a parent will provide coverage through a spouse or domestic partner, include the costs as if the parent paid the costs directly.

<sup>12</sup> Commentary: The 2013 guidelines combine the parents' income for purposes of determining whether health insurance is reasonable in cost, but divide only the exact cost of the current coverage between the parents. This means that if the cost of coverage increases after entry of the support order, the providing parent may be required to pay a greater cost for insurance than is accounted for in the support amount. If 35 months have passed since entry of the order, or if the change rises to the level of a substantial change of circumstances, the parent may be eligible for a modification. However, small changes in the insurance premium are unlikely to put the order out of substantial compliance with the guidelines.

Stat. Auth.: ORS 25.270 – 25.290, 25.323, 180.345

Stats. Implemented: ORS 25.270 – 25.290, 25.321 – 25.343

Effective date: July 1, 2013

**137-050-0755**  
**Minimum Order**

(1) Notwithstanding any other provision of OAR 137-050-0700 to 137-050-0760, it is rebuttably presumed that an obligated parent is able to pay at least \$100 per month as child support, except as provided in section (2).

(2) The presumption in this rule does not apply when:

(a) Each parent has exactly 182.5 annual average overnights as determined by OAR 137-050-0730;

(b) The administrator is entering an order which requires only medical support; or

(c) The parent from whom support is sought:

(A) Has disability benefits as a sole source of income;

(B) Is incarcerated and without ability to pay as described in OAR 137-055-3300(4); or

(C) Receives public benefits as defined in ORS 25.245.

Stat. Auth.: ORS 25.275, 25.280, 180.345

Stats. Implemented: ORS 25.275, 25.280

Effective date: July 1, 2013

## 137-050-0760 Rebuttals

(1) The presumption that the guideline support amount as provided in OAR 137-050-0700 through OAR 137-050-0755 is the correct support amount may be rebutted by a finding that sets out the presumed amount, concludes that it is unjust or inappropriate, and sets forth a different amount and a reason it should be ordered.<sup>1</sup> A supplemental calculation is not required but may be used in support of the rebuttal.<sup>2</sup> The criteria that may be the basis for rebuttal include but are not limited to:

- (a) Evidence of the other available resources of the parent;<sup>3</sup>
- (b) The reasonable necessities of the parent;
- (c) The net income of the parent remaining after withholding required by law or as a condition of employment;<sup>4</sup>
- (d) A parent's ability to borrow;
- (e) The number and needs of other dependents of a parent;<sup>5</sup>

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<sup>1</sup> Commentary: The child support amount determined by the formula in OAR 137-050-0700 through OAR 137-050-0755 is presumed correct. If the result is unjust or inappropriate, the court, administrator, or administrative law judge may rebut that presumption and substitute a just and appropriate figure. This list of possible reasons for rebuttal, like the list in ORS 25.280, is not exclusive. The court, administrator, or administrative law judge may consider other appropriate economic factors that directly affect the needs and best interests of the child(ren). *Matter of Marriage of Petersen*, 132 Or App 190 198; 888 P2d 23 (1994).

The party seeking to rebut the presumption in ORS 25.280 has the burden of coming forward with probative evidence that would support a finding that it would be unjust or inappropriate to apply the formula in establishing a child support obligation. *Redler & Redler*, 330 Or 51, 60, 996 P2d 963, 968 (2000)

The court may not base a rebuttal on a factor, such as income disparity between the parties, that is a determinative factor in the guidelines' calculation of a parent's presumed child support obligation. *Matter of Marriage of Larkin*, 146 Or App 310, 313, 932 P2d 115, 116 (1997)

<sup>2</sup> Commentary: Such a calculation could be based on the guideline support formula but also include factors not considered under the support guidelines. The rebuttal factors may be applied by adjusting the income of a parent, or the costs for the child or the presumed support amount. The Oregon Child Support Program publishes a support rebuttal calculator which allows the user to include such factors.

<sup>3</sup> Commentary: "Evidence of the other available resources of the parent" may include income earned as overtime that will increase the parent's ability to support the child, but is not already included in gross income because, e.g., it is not recurring or is not amenable to annualization.

<sup>4</sup> Commentary: Employee contributions to a retirement plan required as a condition of employment may or may not make a significant impact on a parent's ability to pay the presumed amount of child support. In order to be considered as a rebuttal by the trier of fact, any adjustment must be mandatory and significantly reduce or enhance the income that is available to the parent.

<sup>5</sup> Commentary: Stepchildren are excluded from the nonjoint child deduction in OAR 137-050-0720 unless there is an order for the stepparent to support the child, as it is presumed that the legal parents of the

(f) The special hardships of a parent affecting the parent's ability to pay support, including, but not limited to, any medical circumstances, extraordinary travel costs related to the exercise of parenting time, or requirements of a reunification plan if the child is in state-financed care;<sup>6</sup>

(g) The desirability of the custodial parent remaining in the home as a full-time parent or working less than full-time to fulfill the role of parent and homemaker;<sup>7</sup>

(h) The tax consequences, if any, to both parents resulting from spousal support awarded, the determination of which parent will name the child as a dependent, child tax credits, or the earned income tax credit received by either parent;<sup>8</sup>

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stepchild are responsible for his or her support. However, where the stepparent is providing substantial support for a stepchild, rebuttal may be appropriate.

<sup>6</sup> Commentary: When a parent incurs extraordinary transportation costs in the exercise of parenting time with a child, and when that expense would impair the ability to pay the presumed correct child support amount, the trier may find it appropriate to reduce the amount of support to be paid by a parent. This criterion might also justify an increase in support when the nonpaying parent incurs extraordinary travel costs to facilitate parenting time between the child and the other parent.

Transportation costs should be extraordinary in order to render the guideline support amount unjust or inappropriate, such as travel that requires an overnight stay or transportation other than by auto. The parenting time credit considers basic travel costs, including exercising parenting time.

This criterion also includes the hardships of a parent trying to comply with the specific requirements of a reunification plan or other agreement to reunite with their child, who are in custody of Child Welfare or the Oregon Youth Authority. When a parent is required to pay for expenses (such as classes, counseling, medical costs, appropriate housing, transportation costs, visitation costs, etc.) as part of the reunification plan or other agreement, it may be appropriate to reduce the amount of support to be paid by the parent when such expenses would impair the ability to pay the presumed correct child support amount.

<sup>7</sup> Commentary: To increase the support order based on this factor, it would presumably be demonstrated both that the custodial parent's failure to work full time (or at all) was justified by the compelling desirability of remaining at home with the child(ren) and that the custodial parent's failure to produce the expected income should be compensated for by increased payments on the part of the noncustodial parent. In considering an argument that this criterion stands as the reason for a rebuttal, the trier will probably have to be persuaded both on the merits of the custodial parent remaining at home, the noncustodial parent's ability to pay an increased amount and the equities of such an order.

<sup>8</sup> Commentary: The formula and scale presume that the parent with primary physical custody of the child will receive the dependency exemption. If this presumption is correct, no further consideration need be given to this issue. If in a particular case, however, this exemption goes to the parent who does not have primary physical custody, there may be a reason to adjust the calculation. Because the parenting time credit is based on the scale amount, it allocates the dependency exemption between the parents in proportion to their parenting time credits.

The scale is based on 2006 federal and state tax assumptions. It does not include any changes to the tax code since 2006. It also does not account for any Earned Income Tax Credit (EITC) to which a parent may be entitled. The fact finder may use actual evidence of the earned income or child tax credit in these scenarios. See

[http://oregonchildsupport.gov/laws/guidelines\\_archive/docs/psi\\_guidelines\\_review\\_2006.pdf#page=21](http://oregonchildsupport.gov/laws/guidelines_archive/docs/psi_guidelines_review_2006.pdf#page=21).

(i) The financial advantage afforded a parent's household by the income of a spouse or domestic partner;<sup>9</sup>

(j) The financial advantage afforded a parent's household by benefits of employment including, but not limited to, those provided by a family owned corporation or self-employment, such as housing, food, clothing, health benefits and the like, but only if unable to include those benefits as income under OAR 137-050-0715;<sup>10</sup>

(k) Evidence that a child who is subject to the support order is not living with either parent;<sup>11</sup>

(L) Findings in a judgment, order, decree or settlement agreement that the existing support award is or was made in consideration of other property, debt or financial awards, and those findings remain relevant;<sup>12</sup>

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<sup>9</sup> Commentary: This criterion is intended to apply in situations where an obligor or obligee is voluntarily unemployed or employed at less than his or her earning capacity because a spouse or domestic partner provides a financial advantage to the household which enables the obligor or obligee to be unemployed or work at less than a full-time job.

A spouse or domestic partner's income is not included in income for purposes of the guideline support calculation. *Matter of Marriage of Ainsworth*, 114 Or App 311, 314-315, 835 P2d 928, 929-30 (1992). The Court of Appeals found that it was error for the court to include the wages of each parent's new partner in calculating the presumptive child support obligation of each parent. *Matter of Marriage of Hardiman*, 133 Or App 112, 113, 889 P2d 1354, 1355 (1995).

Example: Obligee used to work full-time, but is no longer working because he or she is married to a spouse who earns a significant income. Because obligee has chosen not to work, his or her income would be calculated based on a determination of potential income. Under this situation, the fact finder may consider the financial advantage afforded to obligee's household resulting from the spouse's income to rebut the presumed child support amount.

Before employing this rebuttal criterion, ensure that the guideline support amount reflects any appropriate imputed income for the unemployed or underemployed parent. For a parent foregoing a professional career because of a spouse's income, using the parent's potential income may result in a just and appropriate support amount without need to rebut.

<sup>10</sup> Commentary: The "benefits of employment" could be any benefit, not counted as income, that provides a financial advantage. Those benefits may include, but are not limited to, those which provide or subsidize housing, transportation, food, clothing, health benefits and the like. The trier, in allowing a rebuttal based on this criterion, must assign a dollar value to the benefit and make a decision about how that amount affects the need for, or the ability to pay, child support. This criterion should be considered only after determining the guideline support amount in light of any in-kind payments or reimbursements counted as income under OAR 137-050-715(4)(b).

<sup>11</sup> Commentary: Where the child does not live with either parent, it is for the trier to determine whether the presumptive amount of support should be ordered, or whether a departure from the guidelines is appropriate.

<sup>12</sup> If previous orders regarding child support varied from the presumptively correct amount because of other property, debt or financial awards, and those facts remain relevant to any subsequent proceeding (i.e., a modification proceeding), then those facts should be allowed to support rebuttal argument to any support award contemplated.

(m) The net income of the parent remaining after payment of mutually incurred financial obligations;<sup>13</sup>

(n) The tax advantage or adverse tax effect of a parent's income or benefits;<sup>14</sup>

(o) The extraordinary or diminished needs of the child,<sup>15</sup> except:

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<sup>13</sup> Commentary: One party may assume financial responsibility for significant obligations incurred jointly. If this obligation relieves one parent of a significant financial burden while reducing the available resources of the other, it may be appropriate to increase or reduce the income of the parent accordingly.

<sup>14</sup> Commentary: The guidelines assume that income will be taxed as earnings and that there is a standard net income for each gross income level specified in these guidelines. That is, even though the guidelines provide for calculations using gross income amounts, the child support awards produced by the guidelines are, in fact, based upon the net income resulting from that particular gross income amount, assuming a tax deduction claim for only one person, i.e., the person whose income is being determined.

Therefore child support for one child based on a gross income of \$2000, and filing as described above, is \$245. What the user cannot see is that \$245 is really the child support for net disposable income of \$1477, which is \$2000 minus \$237 federal income taxes, \$133 state income tax and \$153 in Social Security deductions. For details of the net to gross conversion method, please see [http://oregonchildsupport.gov/laws/guidelines\\_archive/docs/psi\\_guidelines\\_review\\_2006.pdf#page=127](http://oregonchildsupport.gov/laws/guidelines_archive/docs/psi_guidelines_review_2006.pdf#page=127).

This is not to imply that a parent who claims more or less than one deduction, and whose net income is therefore more or less than would result from one deduction, should be treated differently by this process. The method of deriving net income from gross as explained here is simply a method of "leveling the playing field", so that when we deal with people with similar gross earnings we will also be attributing similar net incomes to them regardless of the number of exemptions they may claim.

However, if the nature of the income or benefit received by the parent is such that it is subject to either more or less taxes than earned income then consideration should be given to both the parent's before-tax and after-tax income. If the trier finds that the income or benefit is not taxable as assumed by the guidelines or taxed at a lower than normal rate, then the presumptively correct support award may not ~~not~~ be correct and could be subject to rebuttal under this rule.

<sup>15</sup> Commentary: The guideline support amount is intended to provide for the educational, physical and emotional needs of the child for whom support is sought. In some circumstances, these needs may be higher or lower than that of the average child.

Extraordinary medical expenses are not considered in the guideline support amount. If the child has extraordinary medical expenses, they can be addressed under this factor to the extent they are not addressed through cash medical support. The basic support amount derived from the scale and determined under OAR 137-050-0725 includes the children's ordinary medical expenses (i.e., out-of-pocket expenses not covered by insurance). This includes band-aids, co-pays for doctor's well visits, and over-the-counter medicines. Extraordinary are "likely to be expended on such items as orthodontia and uninsured expenses that may include asthma treatment, certain medical equipment, visits to the emergency room of a hospital outside of the healthcare provider's network and other expenses." Because extraordinary and ordinary medical expenses are different in character, and ordinary expenses typically consist of small over-the-counter purchases, it is not necessary to demonstrate \$250 in expenditures before considering extraordinary costs as a rebuttal factor.

A child's earnings may be considered as a possible basis for departing from the presumed support amount if there is evidence that those earnings diminish the child's need for parental support. Such earnings, therefore, should be extraordinary, e.g., a large personal injury settlement or a significant trust fund, etc. In the vast majority of cases, a child's earnings or property should not impact a parent's

(A) Expenses for extracurricular activities<sup>16</sup> and

(B) Social Security benefits paid to a child because of a child's disability;<sup>17</sup>

(p) The return of capital.<sup>18</sup>

(q) The financial costs of supporting a Child Attending School at school, including room, board, tuition and fees, and discretionary expenses, the ability of the Child Attending School to meet those expenses with scholarships, grants and loans, and the ability of a parent to provide support for the Child Attending School, either in kind where a child continues to live in a parent's home or with cash if there are parental resources to provide financial support over and above the amount for a Child Attending School generated by the child support calculator.<sup>19</sup>

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responsibility to contribute to the support of his or her child. To conclude otherwise would negatively impact the parent-child relationship and provide a disincentive for children to obtain experience in the workforce. See *Redler & Redler*, 330 Or 51, 60-61, 996 P2d 963, 968 (2000) (Evidence that two minor daughters residing with mother earned combined income of approximately \$6,200 from newspaper routes in previous year and that their mother earned approximately \$3,900 in same year was insufficient to rebut presumption that statutory formula provided correct amount of child support owed by noncustodial father, where other evidence indicated mother and father had only part-time jobs that paid minimum wage or slightly above minimum wage and that financial situation in mother's household remained "tight" despite daughters' employment)

<sup>16</sup> Commentary: The guidelines do not take into consideration extracurricular expenses. This is an issue that needs to be negotiated between the parents as these types of expenses are wants, not needs, and the guidelines and scale cover only the needs of children.

<sup>17</sup> Commentary: Social Security benefits paid to a child because of the child's disability are based on the child's extraordinary needs the child and should not be included as income to either parent or be used to reduce the child support obligation. Because the benefits paid by the Social Security Administration are intended to defray the additional costs associated with a child's disability, an upward deviation from the guideline amount may not be necessary. On a related but distinct issue, please see OAR 137-050-0740 for the treatment of Social Security or Veterans benefits received on behalf of a child due to a parent's disability.

For case law on this topic see *Longcor v. Longcor*, 114 Or App 89, 834 P2d 479 (1992), and *Dawson v. Dawson*, 142 Or App 35, 919 P2d 517 (1996).

<sup>18</sup> Commentary: Return *on* capital (for instance, interest earnings on investments), is income as provided in OAR 137-050-0715. Return *of* capital is income derived from the sale of property, but does not include interest payments. Return *of* capital could, for example, be the part of a payment received on a land sale contract in payment for real property which represents the principal rather than the interest.

Generally, it is not intended that an obligated parent should be required to spend down an asset in order to pay support. However, it may be appropriate to increase the parent's income in certain scenarios, such as where a parent has opted to live off of the sale of an asset rather than earning income.

<sup>19</sup> Commentary: Application of these guidelines is often difficult in those situations where an 18-21 year old child is a "child attending school" as defined in ORS 107.108. The scale itself is based on the average expenses of children in the home from ages 0-17. (For further discussion, see commentary to OAR 137-050-0490). A child attending school may live with a parent, in a dormitory, with a roommate, with a domestic partner, or alone. These situations may call for a rebuttal of the presumptive amount of child support.

Stat. Auth.: ORS 25.270 – 25.290, 180.345  
Stats. Implemented: ORS 25.270 – 25.290  
Effective date: July 1, 2013

## **137-050-0765**

### **Agreed Support Amount**

(1) It is in the best interest of children to have support orders reached by agreement of the parents. Entering orders with the parents' consent promotes positive parental involvement and prompt, consistent payment of the support obligation. Parents who enter into agreed support amounts avoid the uncertainty of hearings and possible appeals.

(2) The guideline support amount and rebuttal factors are intended to meet the needs of most families. Likewise, the rebuttal factors in OAR 137-050-0760 address most situations in which the guideline amount is inappropriate. However, there will be families for whom the support amount, even rebutted, is not correct and who value the certainty of agreed support amounts.

(3) In consideration of foregoing hearing and appeal rights, the parties may consent to a support amount that is within 15 percent of the amount determined under rules 137-050-0700 through 137-050-0760. The order must be entered with the written consent of the parties.

(4) Apply any change to the support amount under this rule proportionally to cash child support and cash medical support, and to minor children and Children Attending School. Round each result to the nearest dollar.

(5) An agreed support amount entered pursuant to this rule is presumed to be just and appropriate within the meaning of ORS 25.280.

Stat. Auth.: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

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