
Rule CS 1
DEVIATION FROM CHILD SUPPORT PERCENTAGE STANDARDS

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1.1. Introduction

1.1-1. *Purpose.* This rule is promulgated for the purpose of determining child support when circumstances require a deviation from the percentage standards in Chapter 704.

1.1-2. *Applicability.* This rule applies to any child support order or child support order modification implemented under Chapter 704.

1.1-3. *Effect of Rule Change.* A modification of any provision in this rule shall not in and of itself be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under Chapter 704. A modification of any provision in this rule shall apply to orders established after the effective date of the modification.

1.1-4. This rule shall be effective June 24, 2009.

1.2. Definitions

1.2-1. In this rule:

(a) “Adjusted monthly income” means the monthly income at which child support is determined for serial family obligors, which is the obligor’s monthly income less the amount of any existing legal obligation for child support.

(b) “Agency” means the Oneida Tribe Child Support Agency.

(c) “Basic support costs” means food, shelter, clothing, transportation, personal care, and incidental recreational costs.

(d) “Child” means a person under the age of eighteen (18), or any person who is less than nineteen (19) years old if he or she is pursuing a high school diploma or its equivalent from an accredited course of instruction.

(e) “Child support” means the total financial obligation a parent has towards his or her child as established through judicial and/or administrative processes.

(f) “Child Support Order” means a judgment of the Family Court or a court of competent jurisdiction ordering payment of child support which provides monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, income withholding, attorneys’ fees and other relief.

(g) “Current 6 month treasury bill rate” means the yield of a U.S. government security with a term of 6 months.

(h) “Dependent household member” means a person for whom a taxpayer is entitled to an exemption for the taxable year under 26 USC 151.

(i) “Family Court” shall mean the judicial arm of the Tribe that is designated to handle all matters under this Law.

(j) “Federal dependency exemption” means the deduction allowed in computing taxable income pursuant to 26 USC 151 for a child of the taxpayer who has not attained the age of nineteen (19) or who is a student.

(k) “Gross income” means any form of payment due to an individual regardless of source, including, but not limited to:

(1) Salary and wages, including overtime pay.

- (2) Interest and investment income.
- (3) Social Security disability and old age insurance benefits under 42 USC 401 to 433.
- (4) Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income.
- (5) Unemployment insurance.
- (6) Income continuation benefits.
- (7) Voluntary deferred compensation and voluntary employee contributions to the following: employee benefit plan, profit-sharing, pension or retirement account.
- (8) Military allowances and veterans benefits.
- (9) Undistributed income of a corporation or any partnership in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset.
- (10) Per capita distribution payments.
- (11) Lease or rental income.
- (12) Prizes over \$1,000.00.
- (13) All other income, whether taxable or not, except that gross income does not include any of the following:
 - (A) Child support.
 - (B) Foster care payments.
 - (C) Kinship care payments.
 - (D) Public assistance benefits, except that child care subsidy payments shall be considered income to a child care provider.
 - (E) Food stamps.
 - (F) Public assistance or financial hardship payments paid by a county or a tribe.
 - (G) Supplemental Security Income under 42 USC 1381 to 1383(f) and state supplemental payments.
 - (H) Payments made for social services.

(l) "Income imputed based on earning capacity" means the amount of income that exceeds the parent's actual income and represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community.

(m) "Income imputed from assets" means the amount of income ascribed to assets that are unproductive and to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child or children at the standard of living they would have if they were living with both parents, and that exceeds the actual income from the assets.

(n) "Income modified for business expenses" means the amount of income after adding wages paid to dependent household members, adding undistributed income that the Family Court determines is not reasonably necessary for the growth of the business, and subtracting business expenses that the Family Court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

- (o) “Intact family” means a family in which the child or children and the obligor reside in the same household and the obligor shares his or her income directly with the child or children and has a legal obligation to support the child or children.
- (p) “Low-income obligor” means an obligor for whom the Family Court uses the monthly support amount provided in the schedule in Appendix A based on the Family Court’s determination that the obligor’s total economic circumstances limit his or her ability to pay support at the level provided under 704.7-2(a) and the obligor’s income is at a level set forth in the schedule in Appendix A.
- (q) “Marital child” means a child born during the marriage of his or her parents. In addition, if the father and mother of a non-marital child enter into a lawful marriage or a marriage which appears and they believe is lawful, except where the parental rights of the mother were terminated before either of these circumstances, the child becomes a marital child and shall enjoy all of the rights and privileges of a marital child as if he or she had been born during the marriage of the parents. The children of all marriages declared void under the law are nevertheless marital children.
- (r) “Monthly income” means the obligor’s income available for child support and is the obligor’s annual gross income or, if applicable, the obligor’s annual income modified for business expenses; plus the obligor’s annual income imputed based on earning capacity; plus the obligor’s annual income imputed from assets; divided by twelve (12).
- (s) “Parent” means the natural or adoptive parent of the child.
- (t) “Obligee” means the person or entity to whom child support is owed.
- (u) “Obligor” means the person who is obliged to pay child support to the obligee.
- (v) “Serial family obligor” means an obligor with an existing legal obligation for child support who incurs an additional legal obligation for child support in a subsequent family as a result of a child support order.
- (w) “Shared-placement obligor” means a parent who has an ordered period of placement of at least twenty-five percent (25%), is ordered by the Family Court to assume the child’s basic support costs in proportion to the time that the parent has placement of the child and is determined to owe a greater support amount than the other parent.
- (x) “Split-placement obligor” means a obligor who has two (2) or more children and who has physical placement of one (1) or more but not all of the children.
- (y) “Variable costs” means the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s special needs, and other activities that involve substantial cost.

1.3. Support Orders

1.3-1. *Determining Income Modified for Business Expenses.* In determining a parent’s monthly income, the Family Court may adjust a parent’s gross income as follows:

- (a) Adding wages paid to dependent household members.
- (b) Adding undistributed income that the Family Court determines is not reasonably necessary for the growth of the business. The parent shall have the burden of proof to show that any undistributed income is reasonably necessary for the growth of the business.
- (c) Reducing gross income by the business expenses that the Family Court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

1.3-2. *Determining Income Imputed Based on Earning Capacity.* When a parent's income is less than the parent's earning capacity or is unknown, the Family Court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement and the availability of work in or near the parent's community. If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the Family Court may impute to the parent the income that a person would earn by working thirty-five (35) hours per week for the federal minimum hourly wage under 29 USC 206 (a)(1). If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

1.3-3. *Determining Income Imputed From Assets.*

(a) The Family Court may impute a reasonable earning potential to a parent's assets if the Family Court finds both of the following:

(1) The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker's compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the parent has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income.

(2) The parent's assets are underproductive and at least one (1) of the following applies:

(a) The parent has diverted income into assets to avoid paying child support.

(b) Income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.

(b) The Family Court shall impute income to assets by multiplying the total net value of the assets by the current 6-month treasury bill rate or any other rate that the Family Court determines is reasonable and subtracting the actual income from the assets that were included as gross income.

1.3-4. *Adjustment for Child's Social Security.* The Family Court may include benefits received by a child under 42 USC 402(d) based on a parent's entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433 in the parent's gross income and adjust a parent's child support obligation by subtracting the amount of the child's social security benefit. In no case may this adjustment require the obligee to reimburse the obligor for any portion of the child's benefit.

1.3-5. *Expression of Ordered Support.* The support amount shall be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the obligor's income and the stipulation requirements of Chapter 704 are satisfied.

1.3-6. *Trust.* The Family Court may protect and promote the best interests of the minor children by setting aside a portion of the child support that either party is ordered to pay in a separate fund or trust for the support, education, and welfare of such children.

1.3-7. *Dependency Exemption.* The Family Court may order the obligee to waive the federal dependency exemption provided that the obligee's execution of the exemption waiver is made contingent on the receipt of child support payments.

1.4. Determining the Child Support Obligation in Special Circumstances

1.4-1. *Determining the Child Support Obligation of a Serial-Family Obligor.*

(a) *Applicability.* This subsection applies only if the additional child support obligation incurred by an obligor is the result of a child support order and the support obligation being calculated is for children from a subsequent family or subsequent paternity judgment or acknowledgment. An obligor may not use the provisions of this section as a basis for seeking modification of an existing order based on a subsequently incurred legal obligation for child support.

(b) *Determination.* For a serial-family obligor, the child support obligation incurred for a marital or nonmarital child in a subsequent family as a result of a child support order may be determined as follows:

- (1) Determine the obligor's monthly income;
- (2) Determine the order of the obligor's legal obligations for child support by listing them according to the date each obligation is incurred. For a marital child, the legal obligation for child support is incurred on the child's date of birth. For a nonmarital child, the legal obligation for child support is incurred on the date of the child support order. For a nonmarital child in an intact family, it is incurred on the date of adoption or the date of the filing of an acknowledgement of paternity. For a nonmarital maternal child in an intact family, it is incurred on the child's date of birth;
- (3) Determine the first child support obligation as follows:
 - (a) If the obligor is subject to an existing support order for that legal obligation, except a shared-placement order, the support for that obligation is the monthly amount of that order; or
 - (b) If the obligor is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the appropriate percentage for that number of children by the obligor's monthly income;
- (4) Adjust the monthly income by subtracting the support for the first legal obligation under (3) from the obligor's monthly income under (1);
- (5) Determine the second child support obligation as follows:
 - (a) If the obligor is subject to an existing support order for that legal obligation, except a shared-placement order, the support for that obligation is the monthly amount of that order; or
 - (b) If the obligor is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the appropriate percentage for that number of children by the obligor's monthly income;
- (6) Adjust the monthly income a second time by subtracting the support for the second legal obligation determined under (5) from the first adjusted monthly income determined under (4);
- (7) Repeat the procedure under (5) and (6) for each additional legal obligation for child support the serial family obligor has incurred;
- (8) Multiply the appropriate percentage for the number of children subject to the new order by the final adjusted monthly income determined in either (6) or (7) to determine the new child support obligation.

Note: The following example shows how the child support obligation is determined for a serial-family obligor whose additional child support obligation has been incurred for a subsequent family.

Assumptions:

- Parent A's current monthly income is \$3000.
- Parent A and Parent B were married, had a child in 1990 and divorced in 1991. Parent A is subject to an existing support order of \$450 per month.
- Parent A remarries and has two children, one born in 1996 and the other in 1997, and remains an intact family.
- Parent A was adjudicated the father in 1998 for a child born in 1995. Child support needs to be established for this child.

Order of parent A's legal obligation for child support:

- First legal obligation: one child (1990) (divorce)
- Second legal obligation: 2 children (1996 and 1997) (intact family)
- Third legal obligation: one child (1998) (paternity)

Calculation:

- Parent A's current monthly income \$3000.
- The first legal obligation is subject to an existing monthly support order (divorce) \$450.
- Adjust the monthly income $\$3000 - 450$
- First adjusted monthly income \$2550
- Determine support for the second legal obligation (intact family) $\$2550 \times .25 = \637.50
- Adjust the first adjusted monthly income $\$2550 - 637.50$
- Second adjusted monthly income \$1912.50
- Determine support for the third legal obligation (paternity) $\$1912.50 \times .17 = \325.12

1.4-2. *Determining the Child Support Obligations of Shared-Placement Parents.*

(a) The shared-placement formula may be applied when both of the following conditions are met:

(1) Both parents have periods of placement of at least twenty-five percent (25%) or ninety-two (92) days a year. The period of placement for each parent shall be determined by calculating the number of overnights or equivalent care ordered to be provided by the parent and dividing that number by 365. The combined periods of placement for both parents shall equal 100%.

(2) Each parent is ordered by the Family Court to assume the child's basic support costs in proportion to the time that the parent has placement of the child.

(b) The child support obligations for parents who meet the requirements of (a) may be determined as follows:

(1) Determine each parent's monthly income. In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time under 1.3-2, the Family Court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more.

(2) Multiply each parent’s monthly income by the appropriate percentage standard under 704.7.

(3) Multiply each amount determined under (2) by 150%.

(4) Multiply the amount determined for each parent under (3) by the proportion of the time that the child spends with the other parent to determine each parent’s child support obligation.

(5) Offset resulting amounts under (4) against each other. The parent with a greater child support obligation is the shared-placement obligor. The shared-placement obligor shall pay the lesser of the amount determined under this section or the amount determined using the appropriate percentage standard under 704.7. If the shared-placement obligor is also a low-income obligor, the child support obligation may be the lesser of the amount determined under this section or under 1.4-4.

(6) In addition to the child support obligation determined under (5), the Family Court shall assign responsibility for payment of the child’s variable costs in proportion to each parent’s share of physical placement, with due consideration to a disparity in the parents’ incomes. The Family Court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third party service provider. The Family Court shall not direct payment of variable costs to be made to the Agency or the Agency’s designee, except as incorporated in the fixed sum or percentage expressed child support order.

Note: The following example shows how to calculate the child support obligations of shared-placement parents.

- Number of children: Two
- Parent A: \$2,000 monthly income
- Ordered placement of the child for 219 days a year or 60%
- Parent B: \$3,000 monthly income
- Ordered placement of the child for 146 days a year or 40%

	Parent A	Parent B
1. Monthly income	\$2,000	\$3,000
2. Monthly income X percentage standard for two children	$\$2,000 \times 25\% = \500	$\$3,000 \times 25\% = \750
3. Amount in 2. X 150%.	$\$500 \times 150\% = \750	$\$750 \times 150\% = \1125
4. Amount in 3. X the proportion of time that the child spends with the other parent	$\$750 \times 40\% = \300	$\$1125 \times 60\% = \675
5. Offset	$\$675 - \$300 = \$375$	
6. Family Court also assigns responsibility for payment of the child’s variable costs.	Manner of payment is between the parents or from a parent to a third party service provider, except as incorporated in the fixed sum or percentage expressed child support order.	

1.4-3. *Determining the Child Support Obligations of Split-Placement Parents.* For parents who have two (2) or more children and each parent has placement of one (1) or more but not all of the children, the child support obligations may be determined as follows:

- (a) Determine each parent's monthly income.
- (b) Multiply each parent's monthly income by the appropriate percentage for the number of children placed with the other parent to determine each parent's child support obligation.
- (c) Offset resulting amounts under (b) against each other. The parent with a greater child support obligation is the split-placement obligor.

Note: The following example shows how to calculate the amount of child support for split-placement parents:

Assumptions:

- Parent A and B have 3 children.
- Parent A has placement of one child and Parent B has placement of 2 children.
- Parent A's monthly income is \$3,000.
- Parent B's monthly income is \$1,500.

Calculation:

- Parent A's child support obligation is $\$3,000 \times 25\% = 750$
- Parent B's child support obligation is $\$1,500 \times 17\% = 255$
- Parent A owes Parent B $750 - 255 = \$495$

1.4-4. *Determining the Child Support Obligation of a Low-Income Obligor.*

(a) The Family Court may use the monthly support amount provided in the schedule in Appendix A as the support amount for an obligor with a monthly income at a level set forth in the schedule if the obligor's total economic circumstances limit his or her ability to pay support at the level determined under 704.7. If an obligor's monthly income is below the lowest income level in Appendix A, the Family Court may set an order at an amount appropriate for the obligor's total economic circumstances. This amount may be lower than the lowest support amount in Appendix A.

(b) The Agency shall revise the schedule in Appendix A at least once every four (4) years. The revision shall be based on changes in the federal poverty guidelines since the schedule was last revised.

Note: The schedule in Appendix A provides reduced percentage rates that may be used to determine the child support obligation for obligors with an income below approximately 125% of the federal poverty guidelines. If an obligor's monthly income is below approximately 75% of the federal poverty guidelines, the Family Court may order an amount appropriate for the obligor's total economic circumstances. For monthly income amount for child support between approximately 75% and 125% of the federal poverty guidelines, the percentage rates in the schedule gradually increase as income increases. The percentage rates used in 704.7 apply to obligors with income greater than or equal to approximately 125% of the federal poverty guidelines.

End.