

Changes in the Treatment of Child Support in OW and ODSP

What Family Lawyers Need to Know

Starting January 2017, important changes are being made to the way Ontario's social assistance programs treat child support payments, which will affect the advice you give to family law clients.

Q: What changes are being made to the way that child support is treated in Ontario for recipients of Ontario Works (OW) and the Ontario Disability Support Program (ODSP)?

A: Ontario's social assistance programs currently treat child support payments as income to the parent who receives them. The child support payments are deducted dollar-for-dollar from their monthly income supports. That is changing. Child support will become exempt as income from eligibility and benefit calculations in both OW and ODSP starting in 2017.

Child support payments will be fully exempt from social assistance benefit calculations and will no longer be deducted from social assistance. This means parents will be able to keep the full amount of any child support they receive. Adult children with disabilities who receive ODSP in their own name and live with a parent will also benefit from the exemption of any child support paid on their behalf.

A court order for child support is not required for recipients to benefit from the exemption. Any child support being paid by a parent for their child will be exempt, so long as it is paid by a person who has an obligation to support the child under the *Family Law Act*, *Divorce Act*, or similar legislation in another jurisdiction.

Q: When will the changes take effect?

A: The changes come into force on different dates, depending on whether the parent is a recipient of OW or ODSP:

- Ontario Disability Support Program: January 1, 2017
- Ontario Works: February 1, 2017

This means that the change will apply to the January payment for ODSP and the February payment for OW. These payments will both be made in late January 2017.

Q: Will retroactive child support also be exempt?

A: Retroactive payments that are intended to cover child support obligations prior to the coming-into-force dates for each program will be treated as though they were received in the month to which they apply. For any child support paid to a social assistance recipient for the period before the change comes into effect, OW and ODSP will re-calculate the amount of social assistance that the recipient ought to have received in those months. The child support will be deducted from their entitlement for those months and a debt will be created. However, no debt will be more than the amount of assistance actually paid.

Going forward, retroactive payments that relate to any period including or after January 2017 (ODSP) or February 2017 (Ontario Works) will be exempt.

Q: Will parents still have to pursue child support in order to receive social assistance?

A: Currently, recipients who might be eligible for child support are obligated to pursue that child support. There are exceptions in cases of domestic violence. But otherwise, failure to pursue child support can result in recipients being cut off social assistance or having their income supports reduced by an amount that they are deemed to have received.

That is changing. Parents will no longer be required to pursue child support as a condition of receiving social assistance. Given that child support will no longer be subject to deduction, assignments of child support payments to OW or ODSP through the Family Responsibility Office will no longer be an option.

Q: How does this change affect the calculation of child support?

A: Nothing will change in the calculation of child support where either or both parents are in receipt of social assistance.

The main change for family lawyers is with the calculation of child support in cases where an adult child with a disability is receiving ODSP payments and living with a parent who is receiving child support under the *Divorce Act*. Where the adult child is receiving ODSP benefits, the *Child Support Guideline* table amount is not presumed. Instead, in determining how much child support should be paid, courts look at the condition, means, needs and other circumstances, including the child's receipt of social assistance, and the ability of parents to contribute to the child's support (*Senos v. Karcz*, 2014 ONCA 459).

Under the current system, family lawyers representing parents with adult disabled children living at home and receiving ODSP benefits have to be very careful in crafting child support agreements or orders. If care isn't taken, there is a strong likelihood that child support monies used to support the adult child will be deducted dollar-for-dollar from the child's ODSP benefits, leaving them no better off. Such a result typically is not what the parents wanted.

When the changes come into effect, crafting child support for adult disabled children will be much simpler. Family lawyers will no longer have to be concerned that disability benefits will be reduced and can operate on the assumption that the child will get the full benefit of their ODSP benefits regardless of any child support payments.

Q: How does this change affect spousal support?

A: Spousal support payments will still be treated as income and deducted from social assistance payments dollar-for-dollar. Individuals who may be eligible for spousal support will still be required to pursue that support as a condition of receiving OW or ODSP. The change should not affect the calculation of spousal support.

However, social assistance will no longer "deem" spousal support to be in pay. Spousal support will only be deducted when the support is actually paid. Since deductions are only made when spousal support is actually received, assignments of spousal support payments to OW or ODSP through the Family Responsibility Office will no longer be an option.

If you are working with a payee who is in receipt of social assistance, they should be advised of their obligation to report that money to social assistance and, if the support relates to a month in which they also received social assistance, that they will have to pay some or all of those benefits back.