

## **Children's Expenses and Child Support**

Presentation to the CBA Family Law Section  
November 20, 2015

Kevin Sidel

Kevin Sidel, LLC  
sideladr@earthlink.net  
kevinsidel.com  
(303) 646-3422

### **I. Basic Child Support Calculations**

Child support guidelines are calculated after periodic reviews by the Colorado Child Support Commission.

C.R.S. §14-10-115(16)

(a) The child support guidelines, including the schedule of basic child support obligations, and general child support issues shall be reviewed, and the results of the review and any recommended changes shall be reported to the governor and to the general assembly on or before December 1, 1991, and at least every four years thereafter by a child support commission, which commission is hereby created.

(b) As part of its review, the commission must consider economic data on the cost of raising children and analyze case data on the application of, and deviations from, the guidelines and the schedule of basic child support obligations to be used in the commission's review to ensure that deviations from the guidelines and schedule of basic child support obligations are limited.

Child Support Commission Reports back to 1990 are available at:  
<http://www2.cde.state.co.us/artemis/govserials/gov5310internet/>

Each of the Child Support Commission Reports details the sophisticated methodology used to determine Colorado's basic Child Support Guidelines. The economic statistics currently used to determine the cost for raising children are derived from the Consumer Expenditure Survey conducted by the United States Bureau of Labor Statistics.

## II. Extraordinary Medical Expenses

### 1. Definitions

C.R.S. §14-10-115(10)(h)(I)

"Any extraordinary medical expenses incurred on behalf of the children shall be added to the basic child support obligation and shall be divided between the parties in proportion to their adjusted gross income."

C.R.S. §14-10-115(10)(h)(II)

"Extraordinary medical expenses are uninsured expenses, including copayments and deductible amounts, in excess of two hundred fifty dollars per child per calendar year."

Thus, medical expenses do not become "extraordinary" and are not shared in proportion to income until each child has reached \$250.00 per year. Expenses less than \$250.00 per child per year are not "extraordinary medical expenses."

### 2. Are Medical Costs Included in Basic Support? Who Pays the First \$250.000 per Child per Year?

#### 1990 Child Support Commission Report:

##### Colorado Child Support Commission Report

##### **Payment of Child Care Costs**

The child support calculation divides expenditures on children into two categories: "basic" expenditures and "add-on" expenditures. Basic expenditures include food, clothing, housing, routine medical care and transportation. These items are included in the basic support amount derived from the table and are the same for all children whose parents have the same income, regardless of actual expenditures.

The add-on expenditures include child care, extraordinary medical care and education expenses. These items are based on actual expenditures. The rationale for separating these items is that they do not occur in every family and may vary widely in cost. It is also relatively straightforward to determine the actual expenditures for these items.

## 1996 Child Support Commission Report

### *Other Adjustments*

The support obligation computed using the Rothbarth parameters is meant to be a basic obligation. To that obligation should be added the costs of other necessary expenditures, such as work-related child care costs and extraordinary medical expenses in excess of \$250 per year per child. As mentioned above, these additional costs of child rearing are not factored into the table of support proportions (Table 2).

**(5) Schedule does not include expenditures on child care, extraordinary medical, and children's share of health insurance costs.** The Schedule is based on economic data which 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, childrens' extraordinary medical care, and the childrens' 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.

## 2005 Child Support Commission Report:

Therefore, the custodial parent is responsible for the first \$250 per child per year in out-of-pocket medical expenses. This responsibility was considered by the Commission when re-calculating the child support guidelines in 2001, to reduce the number of cases in which courts are asked to adjudicate disputes involving medical expenses. However, as the number of shared parenting arrangements is growing, the equity of the current statute as related to that class of cases is being questioned.

The Commission recognized that the situation is not as clear under a "split" parenting arrangement/"Worksheet B" arrangement:

The 2005 Commission was asked to determine how to share these unreimbursed medical expenses when there is a shared parenting time arrangement, or a Worksheet B scenario. The Courts and parties are currently handling this issue in different ways: sometimes one parent pays the entire \$250.00, sometimes each parent pays \$125.00, and sometimes all out-of-pocket extraordinary medical expenses are split, without a \$250.00 threshold.

The Commission proposed the following change to the then-existing statute:

The Commission decided that in a shared parenting time (worksheet B) scenario, all out-of-pocket medical expenses should be considered extraordinary expenses and should be shared by the parties in proportion to each person's share of the combined adjusted gross income.

The proposed change was:

*(A) Extraordinary medical expenses are OUT-OF-POCKET expenses, including copayments and deductible amounts, AFTER THE PRIMARY CARE PARENT HAS PAID two hundred fifty dollars per child per calendar year*

*(B) UNDER A SHARED OR SPLIT PARENTING TIME CALCULATION, EXTRAORDINARY MEDICAL EXPENSES ARE ALL OUT-OF-POCKET EXPENSES, INCLUDING COPAYMENTS AND DEDUCTIBLE AMOUNTS.*

*(II). Extraordinary medical expenses shall include, but need not be limited to, such reasonable costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any uninsured chronic health problem. At the discretion of the court, professional counseling or psychiatric therapy for diagnosed mental disorders may also be considered as an extraordinary medical expense.*

This proposed change was not adopted.

#### 2011 Child Support Commission Report:

In 2011 the Commission discussed whether medical expenses are included in calculating the "basic" (guidelines) child support amounts.

**Healthcare Expenses** - Like childcare expenses, actual healthcare expenses for the children (*i.e.*, insurance coverage and extraordinary, uninsured medical expenses) are to be considered in the worksheet, so they are removed from the Betson-Rothbarth measurements when developing the schedule. Only the child's ordinary, uninsured medical expenses (*e.g.*, bandages, over-the-counter medicines) are considered in the Schedule. These "Ordinary medical expenses" are limited to \$250 per child per year.

*"Betson-Rothbarth": Part of the national statistical analysis of "what families typically spend to raise children." 2011 Child Support Commission Report, p. 14.*

The Commission examined national data on children's medical expenses and determined that the \$250.00 threshold remained reasonable.

The meaning: A child is expected to have approximately \$250.00 in medical expenses each year. This amount has been considered in the calculation of the guidelines child support. Thus, a parent receiving child support is receiving support for the first \$250.00 per child per year in medical expenses.

Expenses greater than \$250.00 per child per year are not anticipated, are thus "extraordinary" and must be addressed separately from the guidelines amount of support.

#### Case Law

In re the Marriage of Marson, 929 P.2d 51 (Colo.App. 1996) (decided under the prior \$100.00 per child per year threshold).

"If the uninsured medical expenses do not exceed \$100.00 for a single illness or condition, the custodial parent is to bear those costs."

In re the Marriage of Finer, 920 P.2d 325 (Colo.App. 1996) (decided under the prior \$100.00 per child per year threshold).

"Here the trial court's order appears to require wife to pay a pro rata portion of all of the child's uninsured medical expenses. And, this payment is to be made in addition to the child support payment to be made by wife, the amount of which was established by the court pursuant to the guidelines. Yet, the statute contemplates that, unless uninsured medical expenses exceed one hundred dollars, the custodial parent is to bear those costs..."

In re Marriage of Ahrens, 847 P.2d 257 (Colo.App. 1993)

Father not required to contribute to counseling costs because father's insurance, which covered counseling, was not being used.

"The plain language of § 14-10-115(12)(b) indicates that extraordinary medical expenses "are uninsured expenses." Hence, any consideration of what may constitute extraordinary medical expenses must begin with a determination of whether the expenses in question are uninsured. If the expenses are covered by insurance, they cannot, as a matter of law, be

considered extraordinary medical expenses pursuant to the plain language of the statute.”

See also S.F.E., In Interest of T.I.E., 981 P.2d 642 (Colo.App. 1998).

### Judicial Branch Self-help Form

The Colorado Judicial Branch form JDF 1822: Instructions for Completing Worksheets A and B Manually

#### **(F) Extraordinary Medical Expenses**

Any extraordinary medical expenses are entered on the worksheet (Line 6d on Worksheet A, Line 10d on Worksheet B) and added to the basic child support obligation. Extraordinary medical expenses, including copayments and deductible amounts, are uninsured expenses in excess of \$250.00 per child per year. Extraordinary medical expenses include, but are not limited to, such costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care and any uninsured chronic health problem. At the discretion of the Court, professional counseling or psychiatric therapy for diagnosed mental disorders may also be considered as an extraordinary medical expense.

The instructions cite the statute.

### III. Education and School Expenses

This discussion involves public school expenses when parents are below the uppermost income level used in calculating child support guidelines.

This discussion does not involve private school enrollment.

#### C.R.S. §14-10-115

There are only two times that a child's "education" or "education expenses" are mentioned in the statute:

1. C.R.S. §14-10-115 (11)(a)(I)

"any expenses for attending any special or private elementary or secondary schools to meet the particular educational needs of the child..."

and

2. C.R.S. §14-10-115 (2)(b)

Duty of Support - Factors to Consider

(b) In determining the amount of support under this subsection (2), the court shall consider all relevant factors, including:

- (I) The financial resources of the child;
- (II) The financial resources of the custodial parent;
- (III) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (IV) The physical and emotional condition of the child and his or her educational needs; and
- (V) The financial resources and needs of the noncustodial parent.

There is no mention of "extracurricular" activities in the statute.

#### 1990 Child Support Commission Report:

Education costs were not included in the list of expenses used to calculate "basic" child support and were specifically mentioned as "add-on" expenditures.

### **Payment of Child Care Costs**

The child support calculation divides expenditures on children into two categories: "basic" expenditures and "add-on" expenditures. Basic expenditures include food, clothing, housing, routine medical care and transportation. These items are included in the basic support amount derived from the table and are the same for all children whose parents have the same income, regardless of actual expenditures.

The add-on expenditures include child care, extraordinary medical care and education expenses. These items are based on actual expenditures. The rationale for separating these items is that they do not occur in every family and may vary widely in cost. It is also relatively straightforward to determine the actual expenditures for these items.

### **1996 Child Support Commission Report:**

By 1996, education expenditures were included in the list of expenses used to calculate basic child support:

**(5) Schedule does not include expenditures on child care, extraordinary medical, and children's share of health insurance costs.** The Schedule is based on economic data which 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, childrens' extraordinary medical care, and the childrens' 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.

### **2011 Child Support Commission Report:**

The 2011 Report indicates that "education fees" are included in the list of "expenditure items considered in the [Bureau of Labor Statistics] data used to estimate child-rearing expenses."

<b>Exhibit 2:                      Partial List of Expenditure Items Considered in the BLS,                      the Data Source Used to Estimate Child-Rearing Expenditures</b>	
Housing	Rent paid for dwellings, parking fees, maintenance, and other expenses for rented dwellings; and interest on mortgages, interest on home equity loans and lines of credit, property taxes and insurance, refinancing and prepayment charges, ground rent, expenses for property management and security, homeowners’ insurance, fire insurance and extended coverage, expenses for repairs and maintenance contracted out, and expenses of materials for owner-performed repairs and maintenance for dwellings used or maintained by the consumer unit. Also includes utilities, cleaning supplies, household textiles, furniture, major and small appliances and other miscellaneous household equipment (tools, plants, decorative items).
Food	Food at home purchased at grocery or other food stores, as well as meals, including tips, purchased away from home ( <i>e.g.</i> , full-service and fast-food restaurant, vending machines).
Transportation	Vehicle finance charges, gasoline and motor oil, maintenance and repairs, vehicle insurance, public transportation, leases, parking fees, and other transportation expenditures.
Entertainment	Admission to sporting events, movies, concerts, health clubs, recreational lessons, television/radio/sound equipment, pets, toys, hobbies, and other entertainment equipment and services.
Apparel	Apparel, footwear, uniforms, diapers, alterations and repairs, dry cleaning, sent-out laundry, watches, and jewelry.
Other	Personal care products, reading materials, education fees, banking fees, interest paid on lines of credit, and other expenses.

The BLS defines “education fees” as:

The screenshot shows the top portion of the Bureau of Labor Statistics website. At the top left is the logo for the United States Department of Labor and the Bureau of Labor Statistics. A navigation menu includes links for Home, Subjects, Data Tools, Publications, Economic Releases, Students, and Beta. The main heading is "Consumer Expenditure Survey" with a "SHARE ON:" button featuring a Facebook icon.

**Education** includes tuition; fees; and textbooks, supplies, and equipment for public and private nursery schools, elementary and high schools, colleges and universities, and other schools.

## 2015 Child Support Commission Report

The 2015 Report found that there have been only minimal changes to the economic data since 2010, thus no change to the guidelines was necessary:

### A. Review of the economic data on the costs of raising children

***Recommendation: No changes to the Schedule of Basic Support Obligations.***

The current schedule was last updated by the Commission in 2011, passed by the General Assembly and made effective as of January 1, 2013, based on economic data available in 2010. After thorough review of the most recent economic data, the Commission concluded that changes have been minimal since 2010.

Thus, the estimated education costs used to calculate current basic support are based on data from 2010 or earlier.

### Case Law

In re Marriage of Eze, 856 P.2d 75, 79 (Colo.App. 1993) (Judge Hume specially concurring, addressing a different issue).

"The use of the child support guidelines to establish the amount of a parent's obligation to support a presently existing family unit is also reasonable because it eliminates the necessity of an accounting of amounts expended for food, housing, clothing, education, medical care, and other necessities of life that are incorporated into the presumptive support guidelines."

In re Marriage of Wells, 252 P.3d 1212 (Colo.App. 2011)

"Here, wife testified that, after being expelled from his regular high school, the child needed a car to get to and from the school he was attending because the school district did not provide bus service to that school, public transportation was unavailable, and she was unable to transport him to school given the demands of her work schedule..."

The trial court found that the child was attending a school where no transportation was available, and therefore, it was appropriate to allocate to husband a proportionate share of the costs that wife sought relating to the child's car."

*Issue was not addressed on appeal.*

In re Marriage of Long, 921 P.2d 67, 70 (Colo.App. 1996)

"[I]ncreased insurance cost for addition of the parties' teenaged son to [mother's] automobile insurance is not an extraordinary expense" for attending school.

#### IV. Extracurricular Expenses

##### Case Law

In re Marriage of West, 94 P.3d 1248, 1250 (Colo.App. 2004)

"A parent may also be required to contribute to the costs associated with a child's athletic activities in some cases. Similarly, the child's particular needs and pre dissolution standard of living are among the factors to be considered by the court."

"For example, the court found both parents agreed that the cost of the athletic activities was reasonable. However, the record does not suggest that father agreed the fees were reasonable. To the contrary, he testified that he had not been consulted about the children's athletic programs and had not agreed to pay the expenses associated with them. He also testified concerning the adequacy of public athletic programs."

"Because we are unable to conclude that the evidence supports the trial court's findings regarding the reasonableness and necessity of the children's tuition and athletic fees, we agree that the court abused its discretion in ordering that they be included in the worksheet as extraordinary expenses."

In re Marriage of Ansay, 839 P.2d 527, 528 (Colo.App. 1992)

"Cheerleading, driver's education, volleyball, debate program, and gymnastics do not qualify as higher education expenses" under the statute. (Decided under the version of 14-10-115(13)(a)(III) that included "higher education" language.

In re Marriage of Laughlin, 932 P.2d 858, 862 (Colo.App. 1997)

Ice skating fees for "an extended and ongoing competitive program" could be included under §14-10-115(13)(I) or as a basis for a deviation in child support.

## **V. Travel Costs**

C.R.S. §14-10-115 (11)

(a) By agreement of the parties or by order of court, the following reasonable and necessary expenses incurred on behalf of the child shall be divided between the parents in proportion to their adjusted gross income:

(II) Any expenses for transportation of the child, or the child and an accompanying parent if the child is less than twelve years of age, between the homes of the parents.

## **VI. Child Dependency Exemptions**

C.R.S. §14-10-115 (12)

Unless otherwise agreed upon by the parties, the court shall allocate the right to claim dependent children for income tax purposes between the parties. These rights shall be allocated between the parties in proportion to their contributions to the costs of raising the children. A parent shall not be entitled to claim a child as a dependent if he or she has not paid all court-ordered child support for that tax year or if claiming the child as a dependent would not result in any tax benefit.