

The Difficulty in Understanding and Applying Section 5/513(a)(1) of the IMDMA

When attempting to calculate support for a disabled child, looking for guidance under the statute will leave you asking questions. This article will simplify how to calculate support and the options available to your client.



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513(a)(2) is often referenced as it sets forth guidelines to determine each parent's respective contribution to a child's educational expenses. The recipient of continuing support under Section 513(a)(2) is a child who has the aptitude to attend a higher level education institution with the ultimate goal of becoming independent from his parents.

Alternatively, Section 513(a)(1) references an individual who, upon reaching the age of majority, is mentally or physically disabled and not otherwise emancipated. In most cases this is an individual who, unlike his 513(a)(2) counterpart, requires continuing support as he will never become entirely independent.

The clear focus of Section 513 is educational expenses. Section 513(a)(2) details the "educational expenses" which may be included and also sets forth relevant factors in determining the Court's allocation of educational expenses between parties. While the statute may be straightforward, explaining to your client the reasons he may be responsible for educational expenses can pose a challenge.

Although Section 513(a)(2) is clear, its (a)(1) corollary is not.

Section 513(a)(1) states in relevant part that:

(a) The court may award sums of money out of the property and income of either or both parties... for the support of the child or children of the parties who have attained majority in the following instances: (1) When the child is mentally or physically disabled and not otherwise emancipated, an application for support may be made before or after the child has attained majority.

Section 513(a)(1) does not explain the precise calculation of support, its uses, or the length of time support continues. The ambiguity of 513(a)(1) leaves attorneys and their clients with many unanswered questions: How is support for an adult disabled child calculated? What expenses should be paid with the continuing support received? Is Supplemental Security

Income (SSI) taken into consideration when determining an adult disabled child's expenses? What if expenses increase - is support modifiable? How does the judge usually rule in these types of cases? With so many unanswered questions, it is best to start at the beginning to explain Section 513(a)(1) to a client.

If a child is disabled prior to reaching the age of majority and a parent is seeking continuing support, a disability finding must be made by a Domestic Relations Court. Even if an individual has been adjudicated disabled in Probate Court, this is insufficient because an individual could be disabled within the meaning of the Probate Act and not be disabled within the meaning of section 513. In construing section 513, the courts have used dictionary definitions of disabled which, in contrast to the Probate Act's definition, concern the inability to manage one's affairs.¹ *Webster's Third New International Dictionary* defines, "disabled" as incapacitated by or as if by illness, injury or wounds.² The Probate Act defines "disabled person" as "a person 18 years or older who (a) because of mental deterioration or physical incapacity is not fully able to manage his person or estate, or (b) is a person with mental illness or a person with a developmental disability and who because of his mental illness or developmental disability is not fully able to manage his person or estate, or (c) because of gambling, idleness, debauchery or excessive use of intoxicants or drugs, so spends or wastes his estate as to expose himself or his family to want or suffering."³

A Petition for Disability Finding can be brought before the Court in both pre-decree and post-decree matters. If your case concerns an individual who has already reached the age of majority, it is both cost-

¹ In re the Marriage of Lerner, 316 Ill. App. 3d 1072, 1077, 738 N.E. 2d 183, 187 (1st Dist. 2000).

² In re the Marriage of Thurmond, 306 Ill. App. 3d 828, 832, 715 N.E. 2d 814, 816 (2nd Dist. 1999).

³ In re the Marriage of Lerner, 316 Ill. App. 3d 1072, 1077, 738 N.E. 2d 183, 187 (1st Dist. 2000).

effective and time efficient to include an application for continuing support in your initial Petition. It is important to note that support can be awarded retroactively to the filing of your Petition, so time is of the essence. In post-decree litigation, the parties' Judgment for Dissolution of Marriage may contain language regarding an individual's disability and a Petition for Disability Finding may not be necessary. Still, the failure of such a finding in the underlying judgment does not preclude a post decree petition seeking a finding.

When the Court finds an individual to be disabled, the Court has discretion to order continuing support pursuant to section 513(a)(1). Though there is a plethora of case law regarding a parent's obligation to provide continuing support for a disabled individual after he reaches the age of majority, there is no case law that dictates the calculation of child support using the Illinois statutory guidelines as set forth in

Section 505(a)(1) of the IMDMA, or based on the child's needs.

A "needs based approach" can be calculated utilizing the following factors as set forth in Section 505(a)(2):

- a) the financial resources of the child;
- b) the financial resources and needs of the custodial parent;
- c) the standard of living the child would have enjoyed had the marriage not been dissolved;
- d) the physical and emotional condition of the child, and his education needs; and
- e) the financial resources and needs of the non-custodial parent.

As disabled individuals may have specialized needs, calculating support using the Illinois statutory guidelines may not be in the best interest of the child. Utilizing a "needs based" approach, the Court will be able to review the individual's specific

monthly needs and calculate a more accurate support amount.

When representing either the custodial or non-custodial parent of an adult disabled child, the arguments for appropriate expenses and each party's contribution will vary significantly. For a custodial parent, in addition to the cost of the individual's specific needs, there are expenses such as mortgage payments, groceries, electricity, etc. Should the individual's portion of these additional expenses be included in a needs-based support calculation? The non-custodial parent will certainly argue against supplementing the custodial parent's mortgage payments and electricity bills as arguably those are expenses that the custodial parent would incur regardless of the individual residing with them. However, because needs-based support is discretionary, being prepared to argue the inclusion of additional expenses may prove successful in some cases and before

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some judges.

Although you will be hard pressed to find two judges who calculate Section 513 support in an identical manner, the Court should always consider the financial resources of the individual, specifically, whether or not a disabled child receives Supplemental Security Income (SSI). SSI provides funds for basic needs such as food, clothing, and shelter, so SSI received should be subtracted from the total monthly expenses of the individual. A simple example: if it is determined that an adult disabled child's needs-based expenses are \$2,000 a month and said individual receives \$694 in SSI, the total monthly expenses to be allocated between the parties is \$1,306. If the individual receives any additional benefits, depending on the party you represent, you should be prepared to argue about the benefits to be included in calculating the child's expenses and each parent's respective support contribution.

Illinois courts have also held that Section 513 expenses are a form of child support to be read in conjunction with Section 505 and Section 510, and thus are modifiable.⁴ Therefore, each parent's contribution to a disabled individual's expenses can be modified upon a substantial change in circumstance. This also means that the Court may interpret Section 513(a)(1) pursuant to statutory guidelines as set forth in Section 505(a) and not a needs-based analysis as discussed above. If the Court utilizes a statutory approach, the non-custodial parent may be ordered to pay 20 percent of his monthly net income for a child with special needs. If this family has more than one child with special needs, the percentage of the support-

ing party's net income to be paid will increase based on the number of special needs children. However, similar to child support under Section 505, practitioners will be hard-pressed to find case law that states when a needs-based analysis should be utilized versus statutory guidelines. This results in the Court having ultimate discretion.

Regardless of whether statutory guidelines or a needs-based analysis is utilized, the contribution of each parent to the individual's monthly expenses will be determined by the court or by agreement. Again, in applying a needs-based analysis, the court will review the financial resources of both parties, the financial resources of the child, the standard of living the child would have enjoyed had the marriage not been dissolved, the physical and emotional condition of the child, and his educational needs. As each case is fact specific, each outcome will differ. Alternatively, in applying statutory guidelines, a non-custodial parent shall pay a set percentage of his monthly net income based on the number of disabled children he was ordered to support. This approach is less fact specific and more in accordance with the idea of continuing child support.

In rare instances, you may represent a client with an adult disabled child who can be classified under both Sections 513(a)(1) and (a)(2). Issues arise when the non-custodial parent, who has been ordered to contribute to college, has also been making payments for the individual pursuant to Section 513(a)(1). Should the payments made pursuant to Section 513(a)(1) be included when calculating the total amount of college expenses paid by the non-custodial parent? Should a dis-

abled child be entitled to receive benefits under both Sections 513(a)(1) and (a)(2)? These questions remain unanswered as case law and Section 513 are silent as to a disabled individual who attends a higher level educational institution.

Although case law is very clear that adult disabled children are entitled to continuing support, Section 513(a)(1) does not provide answers to important questions. When you represent a client with an adult disabled child, it is important to recognize the day-to-day challenges in caring and providing for an adult disabled child. It is also important to understand and correctly apply Section 513(a)(1) as the outcome of a Section 513 support hearing should ultimately result in a ruling that is in the best interest of the child.

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⁴ In re the Marriage of Petersen, 955 N.E. 2d 1131, 1134 (2011).

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