

**May 2025**

## **Imputed Income**

When we last left off on the blog, Sam Sunshine, was still coming to terms with the maintenance he was likely to be ordered to pay his soon to be ex-wife, Susie Sunshine. Further, the attorney had to explain to Sam, that yes, he still had to pay the maintenance, even though Susie has moved on with her new boyfriend, Biff Muscles. As long as Susie's dating relationship with Biff, does not rise to the level of cohabitation on a "resident continuing conjugal basis" she is entitled to continue to receive maintenance for the remainder of the maintenance duration under the order.

As we have discussed in prior blog entries, maintenance is calculated on a formula considering the incomes of both parties. But what about the unemployed or perhaps those who are "underemployed" and could potentially be earning more money? With our fictional divorcing couple, Sam and Susie Sunshine (part time Starbuck's Barista), it would not be shocking to the attorney if Sam were to ask something like, "But Susie has a Master's Degree in early child education, doesn't that amount to something?"

The answer to that question is complicated. When did she last work in that field? How much did she earn? What is the likelihood that years later she can jump back into that field and earn same of more money?

The issue of imputed income comes up, a lot, in both maintenance and child support calculations. Given both maintenance and child support calculations are formulaic, the battleground on these cases quite often becomes what, if any, income to impute to a side that is unemployed or arguably "underemployed." Many courts as a knee jerk simply pencil in full time minimum wage for that number. In Illinois in calendar year 2025, \$15 per hour is the current minimum wage. Considering a 40 hour work week and say for example 50 weeks of the year (two weeks off seems reasonable) full time minimum wage comes out to an even \$30,000 annual to add into the formula. However, that is too simplistic in many cases.

The legislature recently passed a new addition to the Illinois Marriage and Dissolution of Marriage Act to give the court some factors to consider when making a determination as to imputed income for *child support* calculations under 750 ILCS 5/505 as follows:

*(3.2a) Unemployment or underemployment. If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income. In determining potential income, the court shall consider the specific circumstances of a party, to the extent known, including, but not limited to, the parent's:*

- (1) assets;*
- (2) ownership of a substantial non-income producing asset;*
- (3) residence;*
- (4) employment and earning history;*
- (5) job skills;*
- (6) educational attainment;*
- (7) literacy;*
- (8) age;*
- (9) health;*
- (10) criminal records and other employment barriers; and*
- (11) record of seeking work.*

*The court shall also consider the local job market, availability of local employers willing to hire the parent, prevailing earning levels in the local community, and other relevant background factors in the case. If there is insufficient work history to determine employment potential and probable earnings level, there shall be a rebuttable presumption that the parent's potential income is 75% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines for a family of one person. Incarceration shall not be considered voluntary unemployment for child support purposes in establishing or modifying child support.*

*(3.2b) The court may impute income to a party only upon conducting an evidentiary hearing or by agreement of the parties. Imputation of income shall be accompanied by specific written findings identifying the basis or bases for imputation using these factors.*

Nothing in section 505, however, states that this same 11 factor test applies when considering imputing income in a maintenance case. This is interesting because there are certain sections in the maintenance statute (750 ILCS 5/504) that simply refer to the same criteria under the child support statute (750 5/505). For example, when calculating from gross to net income in order to make the guidelines calculation for maintenance, Section 504 basically says “see Section 505” on how to go from gross to net.

But in this new addition to Section 505, there is no corresponding portion of Section 504 that adopts this test. However, that does not mean one could not craft the argument around these same factors when making an argument for the court to impute income for maintenance calculations. Whether the spouse being asked to pay maintenance, or the spouse asking for maintenance is underemployed, Section 504 already includes many of the same concepts as the new the new 11 factor test outlined in Section 505.

The statutory factors set forth in 750 ILCS 5/504 instruct the court in making a determination of whether to award maintenance is as follows. I have highlighted the language in certain cases that certainly sounds like to me one could ask the court to consider the same items in the 11 factor child support imputed income argument.

*(a) Entitlement to maintenance. In a proceeding for dissolution of marriage, legal separation, declaration of invalidity of marriage, or dissolution of a civil union, a proceeding for maintenance following a legal separation or dissolution of the marriage or civil union by a court which lacked personal jurisdiction over the absent spouse, a proceeding for modification of a previous order for maintenance under Section 510 of this Act, or any proceeding authorized under Section 501 of this Act, the court may grant a maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, and the maintenance may be paid from the income or property of the other spouse. The court shall first make a finding as to whether a maintenance award is appropriate, after consideration of all relevant factors, including:*

*(1) the **income** and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance as well as all financial obligations imposed on the parties as a result of the dissolution of marriage;*

*(2) the needs of each party;*

*(3) **the realistic present and future earning capacity of each party;***

*(4) **any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;***

*(5) **any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought;***

*(6) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment;*

*(6.1) the effect of any parental responsibility arrangements and its effect on a party's ability to seek or maintain employment;*

*(7) **the standard of living established during the***

***marriage;***

*(8) the duration of the marriage;*

***(9) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties;***

*(10) all sources of public and private income including, without limitation, disability and retirement income;*

*(11) the tax consequences to each party;*

*(12) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;*

*(13) any valid agreement of the parties; and*

*(14) any other factor that the court expressly finds to be just and equitable.*

So back to Susie's Sunshine's "Master's Degree" in early childhood education. Sure, that coupled with the factors highlighted above, might get some mileage at a hearing that she is underemployed as a part time Barista. But the most determinative facts I have seen, is what has been the recent and past history of the incomes of the parties? For example, if in the 20 years of marriage Susie never once worked in that field with her degree, then the argument falls short. If she recently had income that used her skills and education, then yes, you might be on to something applying the factors of Section 504 to impute some higher wage to her than minimum wage. Again, the 505 factors for imputed income only specifically address child support, but the concepts are the same in that the court can be asked in both child support and maintenance cases to make an adjudication as to imputed income and then plug in that amount of imputed income into the guidelines factors.

That's all for now, until next time...

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