

Use of a Child's Social Security Benefit in Determining Child Support

When determining the amount of a child support order, the first step is to ascertain the amount of income that is available to provide for the child. Determining this issue will generally determine the fairness of any child support order. An effective child support guideline should clearly provide rules for determining what resources may and may not be considered for child support determinations. If a child is receiving social security benefits, a child support order should clearly state whether this income is considered in determining the appropriate amount of child support.

For example, in Maryland a non-custodial parent may be entitled to a modification of a child support award when the child receives social security disability payments. However, the non-custodial parent is not necessarily entitled to an automatic credit against child support obligations equal to the amount of such benefits. The trial court could, in its discretion, adjust the amount of child support obligations of the noncustodial parent consistent with the child support guidelines. Therefore, the amount of the adjustment will not necessarily equal the amount of the social security benefit.

However, in the same Maryland case, the court concluded that a non-custodial parent is not entitled to a downward modification of a child support obligation where, at the time of the original child support order, the child was entitled to the benefits even though the child was not actually receiving the benefits. The court held that there was not a material change in the circumstances that justified changing the child support order. The court reasoned that the potential social security benefits could have been brought to light when the court was originally establishing the child support order.

The child support regulations vary by state as to whether and how a child's social security benefits will affect a child support order. If you have a child receiving social security benefits, you should contact an experienced family law attorney to determine the legal consequences for child support.