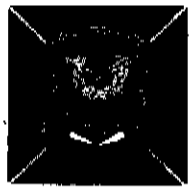

FORT SAM HOUSTON LEGAL ASSISTANCE OFFICE
SETTING CHILD SUPPORT

Q. HOW MUCH CHILD SUPPORT SHOULD I RECEIVE IF I AM SEPARATED FROM THE MOTHER OR FATHER OF MY CHILDREN?

A. The Army requires Soldiers to financially support their families, to include minor children. When one parent is in the Army and the family is separated, there are specific rules for setting family support. In the absence of a legal (from a court or state child support enforcement agency) order or a written agreement between the parties, AR 608-99 establishes interim support guidelines. These are defined in terms of a Soldier's Basic Allowance for Housing II (BAH II) for his rank. As a general rule, the Soldier must provide support in an amount equal to the full BAH II at the "with-dependents" rate (BAH II-WITH) to cover the cost of rent or mortgage and utilities. If the Soldier is required to provide support to more than one group of dependents, AR 608-99 provides for a *pro-rata* distribution. In other words, each supported family member receives an equal share of the BAH II-WITH. The number of shares generally equals the total number of children to be supported plus one for the current civilian spouse, not former spouses.

When a Soldier's family members reside in government family housing, the Soldier is *not* required to pay additional financial support under AR 608-99. When family members reside in different locations, the Soldier will pay a *pro-rata* share of BAH II-WITH to each family member not residing in government family housing, but is not required to pay additional financial support to the remaining family members residing in the government-furnished quarters. When the family unit as a whole resides off-post, the Soldier will provide financial support in an amount equal to the Soldier's BAH II-WITH.

If both parents are in the military and the children live off-post, the non-custodial Soldier must pay BAH-DIFF, which is the difference between his BAH II-WITH and BAH II "without-dependents" (BAH II-WITHOUT) rates. If the children *do* live in government family housing, the non-custodial Soldier is not required to pay additional financial support under AR 608-99. If the Soldier has custody of one or more children, he is not required to financially support the child or children in the custody of the other military member, regardless of whether or not the children live in government family housing.

In all cases, Soldiers who are required to provide support must provide that support regardless of whether or not they are currently receiving any BAH at all. Also, please remember that the calculation of financial support required by AR 608-99 for family members not covered by a

court or state agency order is not affected by the amount of financial support a court or state agency has ordered the Soldier to pay to other family members.

Please note that the other Services' regulatory support requirements differ from the Army's. For the Air Force please refer to AFI 36-2906, for the Navy, MILPERSMAN Article 1754-030, and for the Marine Corps please refer to Legal Admin Manual Chapter 15.

Q. WHO DECIDES HOW MUCH IS ENOUGH? WHAT IF THE OTHER PARENT AND I CANNOT AGREE ON THE AMOUNT OF CHILD SUPPORT?

A. If the two of you are able to reach an agreement on an amount of child support, then that amount should be set out in a written financial support agreement. The agreed upon figure that is stated in the writing is what should be paid as child support. If you and the other parent cannot agree, then AR 608-99 will control until a court or state child support enforcement agency decides the amount of child support that will be required.

Q. WHAT COURT DECIDES CHILD SUPPORT?

A. Most of the time it is a court in the United States that decides the amount of child support due if one of the parents lives there or has moved back to the U.S. A child support case is usually heard in the county where the child is living. If, on the other hand, the child remains overseas, then a lawsuit for the determination of support may be brought in the country where the child lives at present. Here's a simple rule to remember: if you want to be able to enforce the child support decision "Stateside," then you should bring the lawsuit in the U.S. If, on the other hand, you want to enforce the lawsuit in Germany (Italy, Korea, etc.), then you should consider filing the action overseas.

Q. CAN A LEGAL ASSISTANCE ATTORNEY HELP ME FILE A LAWSUIT FOR CHILD SUPPORT?

A. No – our legal assistance attorneys, as well as our post's Inspector General's Office, can help you contact a Soldier's commander about nonsupport, but they cannot start court action for you. In order to file a lawsuit to establish child support, you will have to hire a civilian attorney, but we can assist you to find such a lawyer. In Texas, the Attorney General's Child Support Enforcement Division (1-800-252-8014; http://childsupport.oag.state.tx.us/) can establish and/or enforce child support orders, all free of charge.

Q. HOW DO I KNOW HOW MUCH CHILD SUPPORT I NEED?

A. There is no "right amount" of child support. Many states have adopted child support guidelines to give some general guidance on the "usual" amount of child support in most cases, and these on support are often used by the judge or child support enforcement officer in setting child support and by the parties or attorneys in settling support cases. There is no single guideline for child support. In some states both of the parents' incomes are considered, along with day care expenses and medical costs. In other cases, a percentage of the non-custodial parent's income is the basis for the guidelines.

Texas has a statutory schedule for child support, based on the obligor's (the supporting parent's) monthly net resources (usually, all income, including non-taxable income like BAH and BAS, minus federal taxes based on standard deduction at single rate, state taxes, etc.). For one child, child support will be ordered in the amount equal to 20% of the net resources. For each additional child, an additional 5% will be ordered to a maximum of 35%.

Q. WHAT IF I NEED MORE CHILD SUPPORT THAN SHOWN IN THE GUIDELINES?

A. The guidelines of most states are flexible and allow for a child's special needs, extremely high or low income, and other factors the court or state officer finds to be important. Make a list of all monthly expenses for your household and apportion the expenses between yourself and the child or children. Be sure to set aside a certain portion of the rent, utilities, and food for each child. Also consider whether to apportion such expenses as car payments, gasoline, and medical bills for each child. *You* are responsible for support of the child or children, and *you* are the one who best knows the facts, needs, and expenses. The judge or enforcement officer can go outside the guidelines, but it is *up to you* to prove the need for a variance from the guidelines.

Q. WHEN MY CHILD IS VISITING MY EX-SPOUSE, CAN HE REDUCE THE CHILD SUPPORT HE'S REQUIRED TO SEND TO ME?

A. No – this is not allowed unless the court/state order or written agreement specifically provides for a reduction. If it doesn't, then the child support payment should remain the same. Similarly, he cannot reduce the child support by other amounts, such as the cost of a plane ticket for visitation, or the cost of gifts, food, travel or clothing for the child, unless the order or written agreement specifies that he can do so.

Q. MY SON IS IN CALIFORNIA AND I'M STATIONED IN GERMANY. HIS MOM REFUSES TO LET ME SEE HIM. IF I CANNOT GET MY VISITATION RIGHTS, CAN I STOP PAYING SUPPORT?

A. Denial of visitation is not a legal excuse or justification for withholding child support. Neither is lack of child support a legal excuse for refusing the other parent visitation rights. The parents do not have the right to try to link together these separate obligations. Even if a parent is not paying any child support, he may still visit his children. And even if a parent is not allowing visitation, the children are still entitled to child support. That is the general rule.

Q. WHEN DOES CHILD SUPPORT STOP?

A. Child support, without an agreement or court/state order, ordinarily ends at the child's eighteenth or twenty-first birthday, depending on the controlling state's law. It can be extended in some states through high school graduation (if that is later than age eighteen) or even through college. Regardless of what state law says, an agreement or court/state order may set a specific date for the end of child support, such as upon graduation from college or at age twenty-one. Child support obligations may end earlier than the above if the child dies or is emancipated (such as by

joining the military, moving away from home or getting married), but are not discharged by bankruptcy. Child support doesn't automatically end if a child goes to live with the other parent; the parent who has been paying support must petition the court for an order to terminate the current payments of child support and to start the other parent paying child support. In some states the judge can decide whether to extend child support to a later date, such as when the child is incapable of self-support due to a mental or physical disability. The issue of college expenses is covered below.

Q. THE COST OF LIVING IS SO HIGH WHERE I'M STATIONED. CAN I ASK THE COURT FOR MORE CHILD SUPPORT?

A. If the child support is set out in a court or state order, you may petition the court or state agency to increase child support if you can show that there has been a substantial change of circumstances since the date the order was filed. Such a change may consist of increased living expenses, inflation or an increase in the earnings of the other parent. When the parents cannot agree, the court or state agency must resolve the matter and the parent who has custody must prove that present child support is inadequate.

Q. CAN CHILD SUPPORT ALSO BE REDUCED?

A. Yes. The court or state agency has the power to modify child support upwards or downwards, so long as there has been a substantial change of circumstances since the entry of the original order. Thus, for example, a parent who just lost his job or has had a substantial pay cut could petition the court or agency to reduce the child support payments that he is making.

Q. CAN I PAY MY CHILD SUPPORT THROUGH THE COURT OR STATE ENFORCEMENT AGENCY?

A. Yes, if the court or agency order says so. Payment to the court or agency is the preferred method (for both fathers and mothers, regardless of who's paying) because:

- This allows the parents to be sure that payments are properly recorded or credited; and

- It also avoids problems over whether the money was paid (as when child support payments are made in cash directly to the custodial parent and there is no receipt or other document to show proof of payment).

In no event should you pay the other parent in cash; this may be impossible to prove without a receipt. Also do not pay the minor child or children directly. Be sure you make your payments according to the agreement or the court/state order.

Q. ARE THERE ANY OTHER ASPECTS OF CHILD SUPPORT IN ADDITION TO THE MONEY PAID EVERY MONTH?

A. Yes. Such matters as medical expenses, tax exemptions, and college are also important parts of child support. You should try to reach an agreement on these with the other parent if possible. If you can't agree, then you should hire a civilian attorney to file a lawsuit for you.

Q. CAN THE OTHER PARENT'S PAYCHECK BE GARNISHED FOR CHILD SUPPORT?

A. Yes, so long as there is a court or state order for child support; a support agreement alone is not sufficient for garnishment or wage assignment. Once again, garnishment is a court proceeding that requires a lawyer.

Q. CAN THE COURT AWARD ATTORNEY'S FEES TO ME IN A CHILD SUPPORT CASE?

A. Once again, this depends on the law where the case is being tried. If you have to hire an attorney to take the other parent to court because he or she won't pay you any child support, most courts will allow you to request attorney's fees.

Q. IF I'M ORDERED TO PAY CHILD SUPPORT, WILL I GET VISITATION RIGHTS?

A. Ordinarily the non-custodial parent is entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the non-custodial parent has a history of abusing the child. Visitation isn't related to child support, however, and must be requested separately from the petition or motion for child support; you must file a motion for visitation if you want that awarded by the court. Once again, you'll need a private attorney for this, and we can help you locate one.

Q. WON'T CHILD SUPPORT BE SETTLED WHEN I OBTAIN A DIVORCE?

A. Not necessarily. In some states, this may be the case, but elsewhere the courts treat divorce or dissolution decrees separately from child support, custody, and the like. In those states, a support order can be entered before or after a final decree of divorce. In any event, you should remember that you must file a request with the court (sometimes called a complaint, petition or motion) in order to get the court to consider the issue of child support regardless of whether it's at the time of divorce or at another time.

Q. ARE THERE ANY OTHER <u>DO'S</u> AND <u>DON'TS</u> FOR PEOPLE PAYING OR RECEIVING CHILD SUPPORT?

A. Yes. First the **DO'S**--
>DO separate parenting issues from money issues -- they're just not related!

>DO talk to your children about their fears of not being adequately cared for if they express a concern about this.
>DO be concerned, sensitive, and caring as to your children's loyalty to BOTH parents.

There are some **DON'TS** as well--
>DON'T put your children in the position of asking for child support payments; and
>DON'T burden your children with problems they cannot control or solve.

Q. IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?

A. See a legal assistance attorney or private attorney as soon as possible. Your lawyer can answer many questions and help you make a fair and intelligent decision about your choices, options, and alternatives. Our legal assistance office stands ready, willing, and able to help you in these matters. To make an appointment, please call (210) 221-2282. Be sure to bring along with you to your appointment a copy of any documents or court papers that might be helpful to your attorney.

2006 BAH-II and BAH-Diff Rates

Grade	BAH-II with Dependent Rate	BAH-II without Dependent Rate	BAH-DIFF
O-10	1429.20	1161.60	277.50
O-9	1429.20	1161.60	277.50
O-8	1429.20	1161.60	277.50
O-7	1429.20	1161.60	277.50
O-6	1286.70	1065.60	229.80
O-5	1240.20	1026.00	222.00
O-4	1093.20	950.70	147.60
O-3	904.50	762.30	147.30
O-2	771.90	604.20	173.70
O-1	690.90	509.40	188.40
O-3E	972.30	822.90	155.10
O-2E	877.20	699.30	185.10
O-1E	810.90	601.80	216.90
W-5	1055.70	965.70	92.10
W-4	967.50	857.70	113.40
W-3	887.10	721.20	171.60
W-2	815.10	639.90	181.20
W-1	705.30	536.40	175.50
E-9	928.50	704.40	231.90
E-8	856.50	646.80	217.20
E-7	795.00	552.30	251.70
E-6	734.40	499.80	243.00
E-5	660.90	461.10	206.70
E-4	574.20	400.80	179.10
E-3	534.30	393.30	146.40
E-2	509.40	319.50	196.20
E-1 >4	509.40	285.30	231.90
E-1 <4	509.40	285.30	231.90