

Adult Support Payments: Financial Obligation of Non-Custodial Parent Does Not Necessarily End When Child Support Does

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For most non-custodial divorced parents, the obligation to pay child support terminates at the latest upon their child's reaching the age of 23. Under Massachusetts law, however, it is well-settled that non-custodial divorced parents who are financially able may be compelled to contribute to the support of their adult son or daughter who has a serious intellectual, developmental or other disability. In support of its determination that non-custodial parents may be obligated to provide support for that adult son or daughter to the fullest extent possible, the Feinberg Court recognized the following principle:

The duty and obligation of a parent to care for his offspring does not necessarily terminate when the child arrives at a certain age or becomes an adult; nor is it limited to infants and children of tender years. Where an adult son or daughter with a significant intellectual, physical or developmental disability under guardianship is living with a parent, the non-custodial parent may be required to make support payments to the custodial parent.

The custodial parent must petition the Probate and Family Court to seek an order compelling the non-custodial parent to make such payments. The determination of whether to issue such an order is based on the individual circumstances of the parties. Similarly, the amount of such order is also based on the Court's review of a variety of individual factors of each case including, but not limited to, the financial circumstances of the non-custodial parent, the degree of financial support required by the custodial parent and the ability of the adult son or daughter to support him or herself financially.

When this situation exists, a court can impose a legal obligation on a non-custodial parent who is financially able to furnish necessary assistance to continue support payments over the course of their adult child's lifetime.

IMPORTANT FACTORS ABOUT ADULT SUPPORT PAYMENTS

Parents should be mindful of the following as it relates to an action for post-majority support:

- In order to obtain post-majority support for an adult disabled child, he/she must be under guardianship.
- In order to successfully maintain an action for post-majority support, it is necessary to show that the adult at issue cannot through reasonable means provide for his or her own support. In other words, the disability must make him/her incapable of self-support.
- If you are the custodial parent seeking support on behalf of your adult son or daughter with a disability, it is important to identify and quantify his or her reasonable needs. In Massachusetts, there is no authority requiring the Court to apply the Child Support Guidelines in determining the proper level of support. In most cases, it appears that the Court will look to the son or daughter's reasonable needs as balanced by the non-custodial parent's ability to provide support.
- If you are challenging an action brought by the custodial parent for post-majority support, it will be necessary to demonstrate that your son or daughter has, at least to some extent, the ability to provide for himself of herself. Any government benefits received may also be relevant in determining whether your son or daughter's reasonable needs are being met without the need for additional parental financial support.
- Finally, and most importantly, it is necessary to retain counsel who is well-versed in the intersection between financial support for a person with a disability and his or her eligibility for government benefits. An order of the Court labeling the post-majority support as "child support" would likely result in a loss of need-based government benefits. Adult support payments should be directed into an appropriately drafted supplemental needs trust in order to avoid the unnecessary loss of government benefits.

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