

Spousal Maintenance Factors

Establish Need: Need must be found before an award of spousal maintenance will be awarded. We look at income from all sources, including interest income from any non-marital property the recipient has or marital property the recipient may be awarded. We must have solid budgets for both parties with documentation.

Ability to Become Self Supporting: The court considers what it will take for the recipient to become self-supporting, whether going back to school is an option, the cost of retraining in comparison to the possible future income, the additional expenses the recipient might have during the retraining period such as child care. We often hire a vocational expert to assist in determining the recipient's employment skills. Generally, retraining is not realistic with a long term marriage.

Standard of Living: The standard of living during the marriage is relevant to the extent there is enough money. An award of maintenance should not be limited to the bare necessities. Enough should be awarded to continue the life style established during the marriage. However, changes in living standards should be equalized.

Duration of Marriage and Lost Opportunity: These two related factors.

Age and Health: Are there any claims of physical or emotional conditions that may impair the recipient's ability to become self-sufficient?

Ability of Obligor to Meet Own Needs: There is an expectation that the pain will be shared. For the purposes of calculating spousal maintenance income is defined as: Income includes any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, self-employment income*, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal maintenance received under a previous order or the current proceeding, Social Security or veterans benefits provided for a joint child, and potential income. *If the obligor is self-employed, there is a separate definition of income.

Tax Implications: Maintenance is deductible for the obligor and considered income for the recipient for tax purposes. The tax implications may govern an appropriate level of spousal maintenance, especially if there is income from property and investments that may be taxed at a different rate than income.

Maintenance and Child Support: Maintenance is gross income to the payee and subtracted from gross income for the payor in determining presumptive child support. An award of maintenance may have a substantial effect on child support.