



Child Support for an Adult Child with Disabilities

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We all know that a parent has a duty to support his or her minor child. But what about an adult child? Can a parent be required to financially support a child who reached the age of majority? Not surprisingly, that answer depends on where you live.

Although it is easy to think that the laws of the United States are uniform from coast to coast, in reality that is not true. Each state has unique laws that apply to its citizens, particularly with respect to matters that impact families and children. However, by reviewing statutes and court opinions throughout the country, some general trends become readily apparent.

This article explores the current status of the law in the United States regarding the following questions:

- 1. Can a parent be required to support an adult child who has a disability?*
- 2. If the answer is “yes” to Question 1, does it matter when the child first became disabled?*
- 3. If a parent is required to pay child support, can a parent’s support obligation be reduced or offset by public benefits the child is receiving?*
- 4. If a child is the beneficiary of a trust, can the trust assets or income be used to offset or reduce a parent’s child support obligation?*

5. *If the parent who is subject to an order to pay child support is the beneficiary of a special needs trust, can the special needs trust itself be held liable to pay the child support?*

It is important to note that this article describes, in general terms, the law throughout the United States with respect to a parent's support obligations for a child with disabilities. It is very likely that the rules in any particular state may differ from those described below. While this article provides information concerning some of the overall concepts and trends concerning a parent's child support obligations, it is important that a parent obtain the advice of a special needs lawyer in his or her state to address specific questions about how the laws in any particular state apply to the parent's situation.

1. Can A Parent Be Required To Support An Adult Child Who Has A Disability?

Today, most courts find that a parent has a duty to support an adult child who is unable (as opposed to unwilling) to support himself. Sometimes this is based on a court's interpretation of an applicable statute. Other times there is no statute on point and the court instead relies on the decisions of courts in prior cases. Occasionally, if the court has no supporting statutory or case law on which to rely, the court will forge ahead and base its decision on its interpretation of the historical common law relating to parental duties.

A small number of courts around the country have held that a parent has no duty to support an adult child who cannot support herself. This minority position usually results from a court relying on a statute that specifically says a parent has no such responsibility, or from historical cases that are binding on the court and prevent it from ruling another way. Sometimes a court will refuse to require a parent to support an adult child because the state does not have a statute on the books that specifically imposes such a duty and, as a result, the court does not feel it has any authority to order child support without such a statute.

A. State Statute Requires Support

A few states have passed statutes that impose a duty on parents to support an adult child with a disability. Any court deciding whether a parent must pay child support for an adult child in a state that has a statute requiring such support will have a very easy task ordering the continuation of child support payments if the child's condition satisfies the statutory requirements.

Other states considering this issue have enacted much broader statutes that impose an affirmative duty on certain family members financially to support close relatives who are unable to support themselves. These statutes, [commonly referred to as "filial responsibility" statutes](#), have been used by courts to require an adult child to support a

parent, siblings to support other siblings, and parents to support an adult child who is unable to support himself.

B. Case Law Requires Support

Many courts have held that a parent does not need to continue to financially support an adult child who has a disability if there is not a state statute imposing a duty to do so. However, all states have child support statutes in some form, and certain courts have imposed a duty of continuing support on a parent by relying on the fact that the definition of the word “child” is not defined by age in the state’s child support statute.

Interestingly, in those states that impose a duty on a parent to support an adult child it usually is not necessary to prove that a child has a particular disability that may qualify the child for federal or state benefits. Instead, many states base the definition of “disability” in part upon an adult child’s inability to adequately support herself. As one Alabama court concluded, “the duty of support arises when the child has insufficient resources and, because of mental or physical infirmity, insufficient income capacity to enable him to meet his reasonable living expenses.” In other words, it is not the mere fact that the adult child has a disability that triggers a parent’s ongoing duty to provide support. Rather, it is the fact that the child cannot support himself independently due to an existing disability that imposes the legal obligation on a parent to ensure support is available. If a child with a disability has sufficient income or resources to support himself, a court typically will not require a parent to pay child support to the child.

C. Court Order in Divorce Requires Support

A court order requiring a parent to support an adult child financially generally is imposed only on parents who no longer are married. Some divorced parents have argued that this is a violation of their Constitutional equal protection rights because divorced parents are treated differently than non-divorced parents. This argument consistently has been rebuffed by the courts.

The rationale legislatures and courts often use to require a divorced, non-custodial parent to pay money towards the support of his or her children is as follows: the children of divorced parents commonly live primarily with one parent (the “custodial parent”) while the other parent (the “non-custodial parent”) lives elsewhere. If the non-custodial parent does not pay money back into the custodial household, through alimony or maintenance to the former spouse and/or child support, the children are deprived of the income and other financial support that the non-custodial parent would have brought to the household had the divorce not occurred. Accordingly, the purpose of requiring a non-custodial parent to

pay child support is to ensure that the children receive financial support in an amount similar to what the children would have experienced had the parents not divorced.

It is important to note that parents who divorce always can agree voluntarily that child support will be provided for an adult child who has a disability. This typically would occur in the separation agreement or decree of divorce entered into by the parents when a divorce is finalized. This issue should be resolved at the time of the divorce, since waiting to raise this issue until child support is about to stop often results in protracted and hostile litigation.

2. Does it Matter When the Child's Disability Began?

Can a parent be required to pay child support for an adult child who did not have a disability when the child reached majority age, but later became disabled? Of the courts that have considered this question, the majority have ruled that an adult child must have incurred his or her disability before the child reaches the age of majority. However, many courts have concluded that a child remains a "minor" if the child never is emancipated, no matter what the chronological age of the child may be.

A. Definitions of Emancipation

While all states have statutes requiring a non custodial parent to pay child support for a minor child until the state no longer deems it necessary, each state's law differs on when this time period expires. The word used to describe the time when a parent's duty to support a child stops is "emancipation." The states use different definitions of "emancipation," but most generally agree that a child under the age of eighteen years or still attending high school is not emancipated, unless the child has married, joined the military or permanently left the parental home. Some state statutes move the emancipation date out to age nineteen or twenty one if the child still is attending school, whether high school or otherwise. Additionally, some state statutes continue to treat an adult child as not being emancipated if the child has a disability and, as a result, cannot support himself or herself independently.

B. The Emancipation Rationale

Even without a statute on point, many courts have determined that a child never becomes emancipated, regardless of age, if the child has a disability. The doctrine these particular courts are relying upon is referred to as the "emancipation rationale", and was described by a Maryland court in the following way: "the duty to support a disabled child into adulthood continues because the disability prevents the child from ever becoming emancipated. The reasoning is that because the child is incapable of emancipation, he remains a minor and the obligation continues until the condition changes. ...[O]nce a child becomes an

emancipated adult the obligation of parental support cannot be resumed.... The fact that the child was incapacitated during his minority is crucial to the emancipation rationale.”

3. Can Public Benefits the Child Is Receiving Offset or Reduce the Parent’s Support Obligation?

This question relates to all children receiving child support, whether a minor or an adult who has a disability. The answer to this question varies depending on what public assistance the child actually is receiving.

A. Social Security

The majority of courts considering this question have held that Social Security payments received by a child due to the disability or retirement of the specific parent obligated to pay child support may be taken into account when calculating the amount of the parent’s support obligation. This is true whether the child is receiving Social Security Disability Income or Social Security as a dependent child. The rationale underlying the court decisions to consider the amount of Social Security being received by a child when calculating the parent’s child support obligation is the fact that such payments result solely from the parent having paid into the Social Security system and are not cash benefits otherwise publicly available to persons with disabilities.

However, if a child receives Social Security benefits for reasons other than the work history of a retired or disabled parent who is ordered to pay child support, then the parent is not credited for the Social Security paid to the child. Here, the courts’ rationale is the inverse of that described above. Specifically, since the parent upon whom a support obligation is imposed did not contribute to the Social Security account being used to pay the child, no credit against the child support obligation is allowed.

If a court allows Social Security benefits being paid to a child to be considered when calculating a parent’s child support obligations, there generally are three ways in which the cash benefits received by a child are treated. Certain courts treat these cash benefits as a direct dollar for dollar offset against the parent’s child support obligation. Other courts first add the amount of such benefits received by the child to the parent’s income (thereby increasing the parent’s child support obligation which is based, in part, on income) and thereafter consider the Social Security received by the child as though it were paid by the parent. Still other courts treat the Social Security benefits received by the child as the child’s own income, which proportionately reduces the child support obligations of both parents.

B. Supplemental Security Income (SSI)

Courts consistently apply a different analysis to the calculation of child support when the child is receiving Supplemental Security Income (SSI) rather than Social Security Disability Income based on a parent's work history. Virtually all courts that have considered this question have ruled that any SSI being received by a child is not to be taken into account when calculating a parent's child support obligation. This particular approach to calculating the amount of child support results from the fact that since neither parent worked and "earned" the SSI being received by the child, the SSI benefits should not be used to offset a parent's obligation to financially support the child.

4. If a Child Is the Beneficiary of a Trust, Can the Trust Assets or Income Be Used to Offset or Reduce a Parent's Child Support Obligation?

Not surprisingly, the answer to this question depends upon the type of trust and how the trust assets may be used to benefit the child. Although there is minimal case law on this issue, in recent years some courts have declined to consider assets held in a special needs trust when determining a parent's child support obligation, even if the trust holds money that previously belonged to the child (e.g., commonly referred to as a "self settled" special needs trust). However, if the trust is not a special needs trust, but instead is one that requires the trustee to use trust assets to support the child or pay for the child's health care, it is possible that the assets in a trust or the distributions from a trust will be taken into account when determining the amount of a parent's child support obligation.

5. Can a Disabled Parent's Special Needs Trust Be Garnished to Pay the Child Support?

So far, no court has held that a special needs trust can be garnished or required to pay a child support obligation owed by the beneficiary of the trust to the beneficiary's child. However, distributions from a trust that are made to the beneficiary who is the parent or spent for the benefit of such individual may be deemed to be "income" to the beneficiary when determining how much child support the beneficiary should pay. Also, one court considering the issue of counting the income to a beneficiary from a non-special needs trust when calculating the beneficiary's child support obligation has suggested that it also might be open to a similar ruling in future cases involving self-settled special needs trusts in which the parent also is the trust beneficiary.

If You Have a Concern, Consult with a Special Needs Lawyer in Your State.

Because this article is intended to provide a general summary of the law concerning child support in the United States, you should contact a special needs lawyer in your state if you have a question about your situation. The Special Needs Alliance website may [assist you in your search for qualified counsel](#).

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