

**403.211 Action to establish or enforce child support -- Rebuttable presumption for award -- Allocation of child-care costs and health care expenses -- Order for payment of health care coverage -- Noncustodial parent's health plan -- Attachment of income -- Credit for disability payments.**

- (1) An action to establish or enforce child support may be initiated by the parent, custodian, or agency substantially contributing to the support of the child. The action may be brought in the county in which the child resides or where the defendant resides.
- (2) At the time of initial establishment of a child support order, whether temporary or permanent, or in any proceeding to modify a support order, the child support guidelines in KRS 403.212 shall serve as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guidelines where their application would be unjust or inappropriate. Any deviation shall be accompanied by a written finding or specific finding on the record by the court, specifying the reason for the deviation.
- (3) A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption and allow for an appropriate adjustment of the guideline award if based upon one (1) or more of the following criteria:
  - (a) A child's extraordinary medical or dental needs;
  - (b) A child's extraordinary educational, job training, or special needs;
  - (c) Either parent's own extraordinary needs, such as medical expenses;
  - (d) The independent financial resources, if any, of the child or children;
  - (e) Combined monthly adjusted parental gross income in excess of the Kentucky child support guidelines;
  - (f) The parents of the child, having demonstrated knowledge of the amount of child support established by the Kentucky child support guidelines, have agreed to child support different from the guideline amount. However, no such agreement shall be the basis of any deviation if public assistance is being paid on behalf of a child under the provisions of Part D of Title IV of the Federal Social Security Act; and
  - (g) Any similar factor of an extraordinary nature specifically identified by the court which would make application of the guidelines inappropriate.
- (4) "Extraordinary" as used in this section shall be determined by the court in its discretion.
- (5) When a party has defaulted or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order child support based upon the needs of the child or the previous standard of living of the child, whichever is greater. An order entered by default or due to insufficient evidence to determine gross income may be modified upward and arrearages awarded from the date of the original order if evidence of gross income is presented within two (2) years which would have established a higher amount of child support pursuant to the child support guidelines set forth in KRS 403.212.

- (6) The court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, reasonable and necessary child care costs incurred due to employment, job search, or education leading to employment, in addition to the amount ordered under the child support guidelines.
- (7) (a) Pursuant to 45 C.F.R. sec. 303.31(a)(2), for the purposes of this section, "health care coverage" includes fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage under which medical services could be provided to a dependent child. If health care coverage is reasonable in cost and accessible to either parent at the time the request for coverage is made, the court shall order the parent to obtain or maintain coverage, and the court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, the cost of health care coverage for the child, in addition to the support ordered under the child support guidelines.
- (b) A parent, who has one hundred percent (100%) of the combined monthly adjusted parental gross income, shall be entitled to a reduction in gross income of the entire amount of premiums incurred and paid.
- (c) The court shall order the cost of health care coverage of the child to be paid by either or both parents of the child regardless of who has physical custody. The court order shall include:
1. A judicial directive designating which parent shall have financial responsibility for providing health care coverage for the dependent child, which shall include but not be limited to health care coverage, payments of necessary health care deductibles or copayments;
  2. If appropriate, cash medical support. "Cash medical support" means an amount to be paid toward the cost of health care coverage, fixed payments for ongoing medical costs, extraordinary medical expenses, or any combination thereof; and
  3. A statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried children up to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered.
- (d) If health care coverage is not reasonable in cost and accessible at the time the request for the coverage is made, the court order shall provide for cash medical support until health care coverage becomes reasonable in cost and accessible.
- (8) (a) For purposes of this section, "reasonable in cost" means that the cost of coverage to the responsible parent does not exceed five percent (5%) of his or her gross income. The five percent (5%) standard shall apply to the cost of adding the child to an existing policy, the difference in the cost between a single and a family policy, or the cost of acquiring a separate policy to cover the child. If the parties agree or the court finds good cause exists, the court

may order health care coverage in excess of five percent (5%) of the parent's gross income.

- (b) For purposes of this section, "accessible" means that there are providers who meet the health care needs of the child and who are located no more than sixty (60) minutes or sixty (60) miles from the child's primary residence, except that nothing shall prohibit use of a provider located more than sixty (60) minutes or sixty (60) miles from the child's primary residence.
- (9) The cost of extraordinary medical expenses shall be allocated between the parties in proportion to their combined monthly adjusted parental gross incomes. "Extraordinary medical expenses" means uninsured expenses in excess of one hundred dollars (\$100) per child per calendar year. "Extraordinary medical expenses" includes but is not limited to the costs that are reasonably necessary for medical, surgical, dental, orthodontal, optometric, nursing, and hospital services; for professional counseling or psychiatric therapy for diagnosed medical disorders; and for drugs and medical supplies, appliances, laboratory, diagnostic, and therapeutic services.
- (10) The court order shall include the Social Security numbers, provided in accordance with KRS 403.135, of all parties subject to a support order.
- (11) In any case administered by the Cabinet for Health and Family Services, if the parent ordered to provide health care coverage is enrolled through an insurer but fails to enroll the child under family coverage, the other parent or the Cabinet for Health and Family Services may, upon application, enroll the child.
- (12) In any case administered by the cabinet, information received or transmitted shall not be published or be open for public inspection, including reasonable evidence of domestic violence or child abuse if the disclosure of the information could be harmful to the custodial parent or the child of the parent. Necessary information and records may be furnished as specified by KRS 205.175.
- (13) In the case in which a parent is obligated to provide health care coverage, and changes employment, and the new employer provides health care coverage, the Cabinet for Health and Family Services shall transfer notice of the provision for coverage for the child to the employer, which shall operate to enroll this child in the obligated parent's health plan, unless the obligated parent contests the notice as specified by KRS Chapter 13B.
- (14) Notwithstanding any other provision of this section, any wage or income shall not be exempt from attachment or assignment for the payment of current child support or owed or to-be-owed child support.
- (15) A payment of money received by a child as a result of a parental disability shall be credited against the child support obligation of the parent. A payment shall not be counted as income to either parent when calculating a child support obligation. An amount received in excess of the child support obligation shall be credited against a child support arrearage owed by the parent that accrued subsequent to the date of the parental disability, but shall not be applied to an arrearage that accrued prior to the date of disability. The date of disability shall be as determined by the paying agency.

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**History:** Amended 2018 Ky. Acts ch. 68, sec. 1, effective July 14, 2018. -- Amended 2009 Ky. Acts ch. 82, sec. 1, effective June 25, 2009. -- Amended 2006 Ky. Acts ch. 126, sec. 4, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 99, sec. 624, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 430, sec. 18, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 255, sec. 19, effective July 15, 1998; and ch. 426, sec. 579, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 328, sec. 3, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 330, sec. 10, effective July 15, 1994. -- Created 1990 Ky. Acts ch. 418, sec. 2, effective July 13, 1990.