

Child Support: Maintenance and Gifts Are Actual Income??

[The NC Child Support Guidelines](#) provide that the term gross income “includes income from any source” and the Court of Appeals has held repeatedly that the term should be construed very broadly. See e.g. *Spicer v. Spicer*, 168 NC App 283 (2005)(even the pain and suffering component of a personal injury settlement is income) and *Moore v. Onafowora*, 208 NC App 674 (2010)(bonuses received on a regular basis are included as recurring income). Unlike many other states, the [NC Guidelines](#) even count nonrecurring and one-time lump sum payments as income.

In an unpublished opinion issued last week, the Court of Appeals reaffirmed a line of cases holding that gifts and ‘maintenance’ received from third parties also must be included as income.

In [Cumberland County v. Cheeks, May 3, 2016](#), the Court of Appeals held that BAH (Basic Allowance for Housing) payments received by military personnel who do not live in government housing must be counted as income because the payments offset the living expenses of the service member.

Guideline Definition of Income

In addition to the statement that income includes “income from any source,” [the Child Support Guidelines](#) contain a nonexclusive list of benefits that should be counted as actual income. That list includes, for example, salary, severance pay, capital gains, retirement and pension payments, workers compensation benefits, disability pay and insurance benefits. In addition, the list defines income to include “*gifts* or prizes” and “alimony or *maintenance* received from a person who is not a party to the pending child support action.” (emphasis added)

The list of excluded benefits is much smaller. That list includes any benefit received through a means-tested public benefits program, such as TANF funds and SSI payments, and payments made by an employer directly to a third party or entity for the benefit of an employee when the payments made by the employer are not deducted from the pay of the employee. This category includes, for example, payments made by an employer for future Social Security and Medicare payments for an employee and amounts paid by the employer for the employee’s health, life or retirement benefits above the amounts paid by the employee.

Court of Appeals Decisions Regarding Gifts and Maintenance

Beginning with the *Spicer* opinion in 2005, the Court of Appeals has held that payments or benefits provided by third parties that reduce the living expenses of a parent should be considered as income, holding that such benefits are either gifts or “maintenance received from a third person who is not a party to the pending child support action.” In *Spicer*, the court held that \$300 should be added to father’s monthly income to account for the value of the free housing being provided to him by his parents. Similarly, in *Williams v. Williams*, 179 NC App 838 (2006), the court held that

the amount mother's father was paying to cover her vehicle and housing payments must be included as mother's income. In another unpublished opinion, the court held that a friend's consistent and recurring deposits into a parent's bank account that occurred over a period of two to three months before the child support hearing should be included in the calculation of the parent's income. *Eggleston v. Willingham*, 199 NC App 755 (2009).

In [Cumberland County v. Cheek](#), the court cited *Spicer* as support for including the BAH payments as income, and also cited Professor Suzanne Reynolds comments in Lee's NC Family Law, section 10.8, that "expense reimbursements or in-kind payments, such as a company car, free housing or reimbursed meals, if they are significant and reduce personal living expenses," should be included in gross income.

In each of these cases, the trial court found that the payments were being made on an on-going basis and counted the benefits as recurring income. While none of the third parties were under a legal obligation to continue to make the payments into the future, there was no indication in the facts of any of the cases that the payments would stop being made in the immediate future.

If a gift or maintenance payment is a one-time occurrence and is determined to be income, the guidelines provide that it will be included as nonrecurring income. Nonrecurring income is either prorated as a part of the support order for a specific period of time or the court orders a parent to pay a percentage of the lump sum in an amount that is equal to the percentage of the parent's recurring income that the parent pays in support. [Guidelines](#).

This is NOT Imputing Income

In several of the cases listed above, the Court of Appeals made it clear that including these benefits and payments as income is not imputing income to a parent. Instead, these amounts are a part of the parent's actual present income. There is no requirement, therefore, that the court find that a parent is deliberately depressing his or her income in bad faith before including these amounts in the calculation.

The Supreme Court's Take on It

The Supreme Court did not review any of the Court of Appeals decisions listed above. However, that court did address the issue of accounting for payments received from third parties in the case of *Guilford County ex. rel. Easter v. Easter*, 344 NC 166 (1996). In that case, the grandparents of the children regularly gave money to the father to help him with living expenses. The trial court did not count the payments as father's income but did use the payments as a basis for deviating from the guidelines after concluding that because of the grandfather's payments, the guideline amount would exceed the reasonable needs of the children. The court of appeals reversed the trial court, concluding that deviation was inappropriate because the grandfather was under no legal obligation to continue making the payments. The Supreme Court disagreed with the Court of Appeals and

held that contributions from third parties to the needs of the children can support deviation under appropriate circumstances.

The Supreme Court pointed out that deviation is the way other states address payments made and benefits provided by third parties. The court held that deviation is not required when such benefits are received by a parent; instead, deviation always is in the discretion of the trial judge. The trial court “must examine the extent and nature of the contributions in order to determine whether a deviation from the guidelines is appropriate considering the criteria for deviation set out in GS 50-13.4(c).”

So What About Living Expenses Covered by a New Spouse?

One significant unanswered question raised by the Court of Appeals opinions on this issue is whether support provided by a new spouse must be included as income to a parent. The broad language in the cases would indicate that yes, if the new spouse makes payments that significantly reduce the living expenses of the parent or provides in-kind items to a parent such as a car or a home, those payments and in-kind items should be included as income.

However, the guidelines clearly state that “income of a person who is not a parent of the child for whom support is being determined” is excluded from the income of the parent, “regardless of whether that person is married to or lives with the child’s parent or has physical custody of the child.” [Guidelines](#). This seems to be a very clear statement that the drafters of the Guidelines do not intend that the income of the new spouse be counted as a source of support for the children.

It seems that deviation is the best way to handle this situation. What do others think?