# What is Included in Child Support under the Child Support Guidelines?

*by William J. Rudnik*

Clients often ask, "What is included in the child support guidelines?" While some expenses are clearly included under a child support guidelines calculation, such as housing and clothing, other less-obvious expenses, such as certain activity expenses, summer camp and car insurance, are also included. A review of the New Jersey Court Rules and appendix to the rules, together with the case law, provides some clarification. The best way, however, to address expenses for which there is a question regarding inclusion in the guidelines calculation is to specify in a marital settlement agreement or consent order whether the expenses are to be paid separately from child support.

## New Jersey Court Rules and Appendix

Initially, New Jersey Court Rule 5:6A, entitled "Child Support Guidelines," provides:

> [t]he guidelines set forth in Appendix IX of these Rules shall be applied when an application to establish or modify child support is considered by the court. The guidelines may be modified or disregarded by the court only where good cause is shown. Good cause shall consist of a) the consideration set forth in Appendix IX-A, or the presence of other relevant factors which may make the guidelines inapplicable or subject to modification, and b) injustice would result from the application of the guidelines. In all cases, the determination of good cause shall be within the sound discretion of the court.

Appendix IX to the court rules provides some additional clarification regarding the expenses included in the child support guidelines. Specifically, Appendix IX-A, paragraph 8, "Expenses Included in the Child Support Schedules," provides the child support will "include the child's share of expenses for housing, food, clothing, transportation, entertainment, unreimbursed health care up to and including $250 per child, per year, and miscellaneous items." The appendix also delineates additional details for each of these categories. While certain expected items are listed under the housing costs, including mortgage principal and interest payments, home equity loans and property taxes, this category also includes "miscellaneous household equipment (*e.g.*, clocks, luggage, light fixtures, computers and software, decorating items, etc.)." As noted below, the court has interpreted this language to include expenses to set up a child's college dormitory room and a laptop computer for a child.

Under transportation, the definition in paragraph 8 includes:

> all costs involved with owning or leasing an automobile including monthly installments toward principal cost, finance charges (interest), lease payments, gas and motor oil, insurance, maintenance and repairs. Also included are other costs related to transportation such as public transit, parking fees, license and registration fees, towing, tolls and automobile service clubs. The net outlay (purchase price minus the trade-in value) for a vehicle purchase is not included.

Transportation, likewise, does not include "expenses associated with a motor vehicle purchase or lease for the intended primary use of a child subject to the support order." The language seems to indicate, without specifically addressing the issue, that a parent's increased cost for his or her own car insurance, as a result of having a child who is a licensed driver living with him or her, is included in the child support calculation.

Paragraph 8 of Appendix IX-A defines 'entertainment' as "[f]ees, memberships and admissions to sports, recreation, or social events, lessons or instructions, movie rentals, televisions, mobile devices, sound equipment, pets, hobbies, toys, playground equipment, photographic equipment, file processing, video games and recreational, exercise or sports equipment." Since fees, member-

ships, lessons and instructions are included in the child support calculation, are there certain sports or activities that are not included? Under the case law, the answer seems to depend on the cost of the activity and whether the parties' collective incomes exceed the child support guidelines limit.

This provision of Appendix IX-A also includes the following note: "The fact that a family does not incur a specific expense in a consumption category is not a basis for a deviation from the child support guidelines." To deviate based upon a claim that a family's costs differ from the average cost used in formulating the guidelines, "a parent must show that the family's marginal spending on children for all items related to a consumption category differs from the average family (e.g., there are no housing costs)." Considering this language, it appears deviation from the guidelines based on 'average costs' is rarely appropriate.

Paragraph 9 of Appendix IX-A, entitled "Expenses That May Be Added to the Basic Child Support Obligation," addresses certain expenses that are not included in basic child support awards. These expenses include childcare; health insurance for the child; predictable and recurring unreimbursed healthcare expenses in excess of $250 per child, per year; and other expenses approved by the court. The average cost of childcare expenses including "day camp, in lieu of child care is not factored into the schedules." These expenses should be added separately. Under the definition of other expenses approved by the court, which would also be added to the basic child support amount, paragraph 9(d) states:

> These are predictable and recurring expenses for children that may not be incurred by average or intact families such as private, elementary, or secondary education, special needs of gifted or disabled children and NCP/PAR time transportation expenses. The addition of these expenses to the basic obligation must be approved by the court. If incurred, special expenses that are not predictable and recurring should be shared by the parents in proportion to their relative incomes (i.e. the sharing of these expenses should be addressed in the general language of the order or judgment). Special expenses not included in the award should be paid directly to the parent who made or will make the expenditure or to the provider of the goods or services.

The question then becomes which expenses are considered 'special' or 'extraordinary,' and when is a child considered 'gifted' for purposes of an educational expense, a sport or an activity?

In evaluating any expense, the first step is to determine whether it is included in the basic child support amount. If it is not included in the child support amount, the next step in the analysis is to determine if it is a predictable and recurring expense, such as private elementary education. Or, is it a 'special' expense that is not predictable and recurring? If an expense is not included in the child support guidelines, the underlying premise for the analysis is whether an expense is 'necessary' for a child. The case law provides additional assistance regarding this analysis.

## Analysis of Case Law

The Appellate Division's decision in *Accardi v. Accardi*[1] analyzes how the court views the issue of activity expenses and whether these expenses are considered 'extraordinary.' In *Accardi,* the plaintiff appealed the trial judge's decision deeming certain activities extraordinary and requiring the plaintiff to contribute to these expenses separately from child support. The court found the former wife's listing of claimed extraordinary expenses was insufficient to support an award of such expenses; however, a remand was required to permit resolution of numerous issues regarding these claimed extraordinary expenses. The court noted the wife had the burden of proof to demonstrate the expenses she claimed were both legitimate and reasonable. The former husband argued the motion judge should not have characterized certain expenses as extraordinary because they were for ordinary extracurricular activities, which should be paid from basic child support, including gymnastics, tennis lessons, horseback riding lessons, drum lessons and cheerleading. The wife countered that these expenses were not only extraordinary but that the children of parents with higher incomes were entitled to the benefits of these advantages.

Although the motion judge determined gymnastics, art lessons and horseback riding lessons were extraordinary expenses, the Appellate Division determined this characterization is not consistent with the child support guidelines. Although the appellate court determined most of the expenses appeared to fall within the description of entertainment expenses as set forth in paragraph 8 of Appendix IX-A to the Rules of Court, the court also considered paragraph 9 of Appendix IX-A. Although

these were not extraordinary expenses, the appellate court noted the expenses "may, in the discretion of the trial court with proper consideration of the statutory factors in N.J.S.A. 2A:34-23, be added to the support obligation of a high income earner."

The Appellate Division, in concluding the expenses were not extraordinary, could not determine from the record whether they fell within the category of extraordinary expenses, which are "not predictable and recurring" and should be shared between the parents in proportion to their relative incomes. The court remanded the matter for a plenary hearing to determine: 1) the items categorized as extraordinary expenses; 2) the items categorized as ordinary extracurricular expenses; 3) whether the extracurricular expenses should be added to or included in the defendant's support obligation under the statutory factors; 4) the allocation of extraordinary and extracurricular expenses between the parties; and 5) calculation of the extraordinary expenses consistent with these directives for 2000, 2001 and 2002.[2]

While *Accardi* provides some direction regarding the analysis to be undertaken by the court, in most cases the cost of the plenary hearing will exceed the actual activity expenses. As a result, parties should endeavor to determine which activities, if any, will be added to the basic child support amount.

In addition, courts have typically considered camp expenses, class trips and driver education classes to be included in the basic child support award under the guidelines.[3] In cases where the parties reach an agreement that provides for a specific division of the children's extracurricular activities, the Appellate Division has determined the trial court does not have a basis to deviate from the parties' agreement without a change in circumstances.[4]

One trial court utilized a formula with a cost threshold for activities that would be reimbursed outside of child support. This is an approach attorneys have also used in drafting property settlement agreements. In *Werosta v. Werosta,*[5] the parties agreed in the property settlement agreement to deviate from the child support guidelines. Subsequent to the divorce, by way of motion, the court ordered the defendant to pay 60 percent of the children's extracurricular expenses, after the plaintiff paid the first $250 per year for each child.

The order specifically referenced the oldest son's hockey league expenses and provided the cost of extracurricular activities beyond $250 per year were "extraordinary expenses that should be shared." The plaintiff appealed, claiming she could not afford the son's travel team hockey expenses based on her limited income. The appellate court noted the trial court's order requiring the parties to share in those expenses when they exceed $250 per child, per year, did not include findings or other provisions determining whether particular extracurricular activities are appropriate for the children or how potential disputes about the costs might be resolved. The court further noted "[a] divorce parent is not bound indefinitely to pay the costs of all extracurricular activities that the other parent chooses for the children. Neither parent may unreasonably withhold agreement, but where an activity is unusually costly or inappropriate for other reasons, it is not unreasonable for a parent to disapprove the expenses or activity. The parent who nevertheless insists on that activity should bear the cost."

The Appellate Division remanded the matter, directing that the trial court should consider and resolve "the parties' dispute regarding each parent's obligation to pay for extraordinary expenses of the children's activities such as for travel hockey team." While the appellate court did not specifically disagree with the trial court's approach that any activity over $250 per child, per year, would be considered extraordinary, the court did address whether both parents should contribute to an expense that is considered extraordinary based upon their respective incomes.

In *Devine v. Devine,*[6] the parties specifically provided for an allocation of certain extracurricular activities in their matrimonial settlement agreement, and also included language that further limited reimbursement to "other activities undertaken after a decision jointly made by the parties, noting neither party's consent [shall] be unreasonably withheld." The appellate court noted the moving party bore the burden of proof regarding whether there was an agreement to pay other expenses, such as school trip expenses. The court determined that because there were no findings the plaintiff agreed to pay a portion of a school trip, for which $491 in contribution was sought, the activity was deemed to fall outside of the parties' agreement. Accordingly, the Appellate Division vacated the order requiring reimbursement of this expense.

Additionally, in *Perry v. Jones,*[7] the trial court awarded the plaintiff a lump sum of $50,000 as additional child support. The Appellate Division noted that unless there is a deviation based upon good cause, a judge is required to apply the child support guidelines.[8] The court further found the trial judge failed to include findings that the plaintiff showed a deviation from the guidelines in the

form of a lump-sum payment was appropriate based upon the factors set forth in the appendix, or because an injustice would result in applying the guidelines. The court reversed the $50,000 lump sum amount and stated if the trial court disregards the child support guidelines, the court must make findings regarding the needs of the children and the standard of living of the parties.

The Appellate Division, in *Elrom v. Elrom,*[9] reviewed a trial judge's decision requiring the defendant to contribute to childcare expenses and to pay half of the children's extracurricular activities as additional support at a time when the plaintiff was unemployed. The court found the trial court failed to explain the deviation from the guidelines by adding childcare and extracurricular activity costs as supplemental support. The plaintiff's assertions were not supported by evidence, as they merely reflected her opinion, and the testimony failed to establish the 'good cause' necessary for disregarding the child support guidelines.

The Appellate Division remanded the matter and requested the trial judge consider whether good cause for a separate allocation of specific extracurricular activities was warranted. The court did note there was no basis for the defendant to contribute to childcare costs because the plaintiff was unemployed at that time.

In *Sherry v. Zebe,*[10] the Appellate Division addressed three separate appeals filed by the parties over time. One of the issues involved the defendant's responsibility to contribute to the cost of repairing the car used by one of the parties' daughters. The Appellate Division noted because the eldest daughter was in college, her use of the vehicle had to be evaluated in accordance with the law governing a parent's duty to support his or her children. Without a duty, the liability for the repairs could not be imposed. In addition, the repair bill must be analyzed because only reasonable repairs can be reimbursed. Although the trial judge acknowledged the child support guidelines covered transportation, the judge determined because the defendant's income was so high, it was appropriate for him to pay a portion of the cost to repair the vehicle so his daughter could use the vehicle to safely transport herself to and from college. The trial judge also found the purchase of software, including Microsoft Home Office, and sorority dues were related to college expenses and should be separately reimbursed. In addition, the court found dormitory furnishings were college expenses, as was the cost of a nurse's uniform for the nursing program. Notably, the language in the parties' settlement agreement that defined college-related expenses did not include expenses such as dormitory furnishings.

The Appellate Division noted that although it was not a child support guidelines case, when parties provide for child support in their settlement agreement, it should be construed in accordance with the applicable law. The parties determined repairing a car was included in basic child support and should not have been awarded separately. If the amount of child support was insufficient as a result of a change in circumstances, then child support should have been recalculated to include nonessential items, rather than entering an *ad hoc* award of child support add-ons. The appellate court reached the same conclusion regarding housing-related expenses, and reversed the award of expenses for software and household items for the younger daughter's dormitory room. The Appellate Division also noted that laptop computers are included in child support and should not be separately reimbursed.[11] The sorority dues and nursing uniform were, likewise, not college expenses as defined by the settlement agreement, and the defendant, therefore, would not be required to contribute separately to those expenses.

In *Tuman v. Tuman,*[12] the trial court required a contribution of one-third of previous and future laptops for the children, one-third of the cost of summer camp, as well as other costs separate from child support. The trial judge's decision was affirmed by the Appellate Division. It is unclear from the decision why the computer cost was awarded. Regarding summer camp, the children had attended camp during the marriage, and the court found continued attendance after the divorce was also reasonable. In analyzing the extraordinary expenses based upon the principles in *Accardi v. Accardi*, the court focused on expenses that were, or should have been, contemplated by the parties during their marriage.

In the case of *Levine v. Levine,*[13] the appellate court addressed commuting expenses for the child to travel from Jersey City to New York City for high school, as well as the cost of uniforms and a class trip to England. The definition of 'transportation' in Appendix IX-A included "other costs related to transportation such as public transit." The remaining expenses for school uniforms and a mandatory trip to England were not extraordinary expenses and should be treated as predictable and recurring expenses, which must be approved by the court to be added to any child support obligation. The trial court viewed the ancillary expenses as falling under existing support payments, and the Appellate Division affirmed.

## Commentary

The appendix to the child support guidelines makes it clear car and related expenses for a child who is included under a support order are not included in the child support guidelines calculation. In determining whether the cost for a vehicle for a child should be shared between the parties, the question is whether the vehicle is a necessity for a child. Arguably, if a child is commuting to college and living at home with one of the parents in a rural area (where public transportation is limited), a vehicle is likely necessary, and is an expense that should be shared between the parties in some manner. In high-income families, it can be considered an extraordinary expense that may be added to basic child support. Because it is not separately addressed in the appendix, it appears expenses for the parent's car, including the increase in car insurance once a child is a licensed driver living in his or her home, would already be included in the basic child support calculation. The reality is, however, this becomes a significant expense because the parent's car insurance premiums may increase by more than $1,000 per year simply because a child is now a licensed driver residing in their home. The attorney can argue this constitutes a change in circumstances warranting a recalculation of child support to factor in the additional costs for the car insurance.

Regarding summer camp, if it is in lieu of daycare (*i.e.*, standard recreational or day camp expense), then it is a separate expense that would be added to the basic child support guidelines calculation. Day camp expenses, which are not in lieu of work-related daycare, would not automatically be added as a separate expense to the basic child support guidelines calculation. Day camp or sleep-away camp would be addressed based upon numerous factors under the case law. Do the parties' incomes exceed the basic child support guidelines limit? Were these expenses anticipated prior to the divorce? By way of example, did the children attend similar camps prior to the divorce? If the camp is a specific type of camp (either sports or educational), a party may also argue it falls within the category of special or extraordinary expenses. The courts seem to analyze these expenses based upon whether the child previously attended or participated in them, whether there is a need for the child to attend or participate, and whether the parents can afford to pay for these expenses. While these types of expenses appear to be fact sensitive, it is clear they are not included in the basic child support calculation. This does not, however, automatically mean a parent must contribute to those expenses.

In addition, it remains unclear when a sports, music, educational activity or lesson is or is not included in the child support calculation. It appears from the case law that most of these expenses would be included in the child support guidelines calculation. At least one court, however, believed a threshold amount of $250 per child, per year, would be appropriate for determining whether an expense would be considered 'extraordinary.'

A question also remains regarding expenses for a child who is involved in an activity such as horseback riding or gymnastics (which can cost in the range of $100 to $500 per month depending on the frequency of the activity) and participates on a continuous basis. Could this be considered a predictable and recurring expense that would be added to the basic child support amount? If not, is this automatically considered a 'special' or 'extraordinary' expense based on the cost? Moreover, travel sports can cost several thousand dollars per year, separate and apart from the actual cost of traveling and staying in hotels for away games/meets and tournaments. Based upon the typical child support guidelines calculation, these types of expenses would appear to exceed the amount used to determine the basic child support guidelines.

The most effective way to handle these types of expenses is to specify, in a marital settlement agreement, which expenses are and are not included in the child support guidelines calculation. While some of this language will depend on whether the children are already involved in certain activities and are anticipated to continue, the parties can also agree on a threshold dollar amount where an activity costing more than a certain amount per year would be shared by the parties. Because of the costs involved in litigating these issues, it is certainly beneficial to try to address them in as much detail as possible in a settlement agreement. Of course, if there are changes in circumstances from the time the parties are divorced, similar to basic child support, the payment for the children's activities is always subject to change. ■

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## Endnotes

1. *Accardi v. Accardi*, 369 N.J. Super. 75 (App. Div. 2004).
2. *Ibid.* (The initial child support award was $6,000 per month, which was above the child support guidelines based on income. Child support was subsequently reduced, although the amount of child support remained above the guidelines).
3. *Spiegler v. Spiegler*, 2009 WL 1257680 (App. Div. 2009)(The trial court noted, and the Appellate Division affirmed, that expenses such as camp expenses, class trips and driver education classes were not "extraordinary expenses" and are included in the child support schedules).
4. *Elgart v. Elgart*, 2015 WL 5446484 (App. Div. 2015).
5. *Werosta v. Werosta*, 2011 WL 3611335 (App. Div. 2011).
6. *Devine v. Devine*, 2015 WL 2211980 (App. Div. 2015) at *7.
7. *Perry v. Jones*, 2014 WL 10190767 (App. Div. 2015).
8. *Perry, supra, citing Diehl v. Diehl*, 389 N.J. Super. 443, 452 (App. Div. 2006).
9. *Elrom v. Elrom*, 439 N.J. Super. 424 (App. Div. 2015).
10. *Sherry v. Zebe*, 2011 WL 4483170 (App. Div. 2011).
11. *Compare with Tuman v. Tuman*, 2011 WL 181303 (App. Div. 2011) where the court awarded, and the Appellate Division, affirmed a required contribution of one-third of the previous and future laptop computers for the children.
12. *Tuman, supra.*
13. *Levine v. Levine*, 2009 WL 153516 (App. Div. 2009).