

## **Ongoing Obligation to Support Adult Children with Disabilities: The Impact of “Section 513”**

A parent may petition for child support for a disabled child who is over the age of majority under the Illinois Marriage and Dissolution of Marriage Act. One of the factors for deviation from the standard child support guidelines is “the physical, mental, and emotional needs of the child.” 750 ILCS 505(a)(2). Beyond this provision, Section 513.5 of the Act explicitly provides for support for a non-minor child with a disability. Specifically, the statute states that a court may award money out of the income or property of either or both parents or out of the estate of a deceased parent to support a child over the age of 18 if the child is mentally or physically disabled and not otherwise emancipated.

One of the primary methods for implementing this provision of the law is by the creation of what is known as a “513 trust” for the benefit of the child, or a special needs trust. The trust is set up in accordance with the Trust and Trustees Act for the benefit of an individual with a disability that substantially impairs his or her ability to provide for his or her own care. The trust is a discretionary trust, meaning that the trustee retains the authority to make distributions. The court considers several factors in determining whether a special needs trust is appropriate in a case. Factors include the financial resources of both parties, including their retirement savings; the standard of living that the child who have enjoyed had the parents not divorced; the financial resources of the child, if any; and any other resource from which the child benefits, including Supplemental Social Security Income, home-based support, or other local, State, or federal benefits.

It is important to note that the petition for support on behalf of the non-minor child with a disability must be made when he or she is eligible for child support or post-educational expenses. 750 ILCS 5/515(a). The petition for support may not be made retroactively. This also means that a court may not order either party to pay for support of an adult child if it first finds that the child is emancipated.

The law on support for the benefit of post-majority disabled adults has been clarified over the years. The statute implicitly grants a court in a domestic relations proceeding the power to determine if a child is disabled. A preliminary determination of disability in probate court is not required. Accordingly, a judge in a domestic relations court has discretion in ordering child support for a disabled adult because the definition of disability is broader under Section 513 of the Illinois Marriage and Dissolution of Marriage Act than it is under the Probate Act. Because there is not an explicit statutory definition under the Illinois Marriage and Dissolution of Marriage Act, a court uses the ordinary meaning of “disabled.”

A petition for support or other expenses for a disabled child under Section 513 can be a very useful tool for divided families struggling with the financial reality of continuing to raise a disabled child beyond the age of majority. If the reasonable needs and expenses of the child outweigh the income of the supporting parent, a court is likely to find this factor a compelling reason to grant support or to increase the support already in place. The disabled child is not a

necessary party to this petition.

By Sharon Falen, J.D.