

Spousal Support Factors

In determining whether to grant spousal support and deciding how much and for how long, the Court is required to consider the following factors.

The past relations and the conduct of the Parties. Fault in the breakdown on the marriage is one issue the court considers. The court also looks at the way the Parties conducted their marriage and how they behaved and contributed to the marriage.

The length of the marriage. The Court does not consider the length of the relationship, only the length of the marriage.

The ability to work. The Court considers both the physical and mental ability to work of the spouse seeking support. A limited award of support may be ordered to allow the spouse to finish an educational program or have the time needed to obtain employment. For people in their 50's, it would generally be considered inappropriate that they would be expected to return to the workplace after a long absence.

The source and amount of property awarded. The focus here is on the income-earning potential of the assets rather than their value. A spouse is not required to dissipate the property awarded to meet their daily needs.

The ages of the Parties. Older people have less job opportunities in general. Where there is an age disparity between the Parties and one is close to retirement with the other having more years to work, the Court should consider the income earning opportunities.

The ability to pay. The Court looks at the actual income and assets available to pay support. The Court may also look at imputed income where one party has an unexercised ability to earn income if that income is voluntarily reduced to avoid paying spousal support. Here the Court would look at the Parties employment histories, reasons for termination of employment, work opportunities available, diligence in trying to find employment and the availability of employment. The Court may also consider whether the payee has voluntarily reduced their income, for example by delaying receipt of pension benefits.

The present situation of the Parties. This factor tends to focus on the cumulative effect of other factors presented in weighing the equities of spousal support awards.

The needs of the Parties. The Court considers the present or anticipated needs of the spouse seeking support. The Court considers retirement benefits available, ability to care for adult dependent children, ability to maintain the assets awarded and other factors based on the current and future positions of the Parties.

The health of the Parties. Health issues impact both the ability to work and the needs of the Parties.

Prior standards of living. The Parties should be able to maintain their prior station in life and standard of living if there are funds available.

Responsibility for others' support. The Court may consider the needs of disabled adult children for whom the payee is providing care. Adult children who are employed or employable but living with the spouse should not be considered.

General principles of equity. The Court must balance what the payer can reasonably afford with what the payee needs.

There is also a computer program which gives the Court guidelines for support. These are merely suggestions. The Court makes its own determination.