

Support For a Disabled Child Under 750 ILCS 5/513.5

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I RECENTLY TRIED A CASE IN ROLLING MEADOWS before Judge Daley involving 750 ILCS 5/513.5. This case is an excellent summary of the law of Section 513.5 since there was sadly a lack of agreement or stipulation on so many points.

The background of the family was a couple who lived together in multiple homes from approximately 1994 until 2018. The parties had 3 children together. They had a daughter, a son, the autistic adult child who is the subject of these proceedings and another daughter. During their relationship, father was a pilot and mother was a flight attendant with the same airline. While they were living together, they set their schedules to be opposite of each other so that they could care for the children, particularly, their only son who was diagnosed with autism, hypothyroidism, depression and anxiety. Recently, the subject adult child has also been diagnosed with diabetes with complicated management due to autism.

After the 2018 breakup, father was left with a robust pension and 401k valued at substantially more than a million dollars. Mother's assets were less than an eighth of Father. Father refused to provide any support as he was told that he had no obligation to support an adult.

In October, 2020, we filed our petition on behalf of Mother.

Standing/ Statute of Limitations:

First, 750 ILCS 5/513.5 applies to both married and unmarried couples. It does not require a determination of disability in the probate court. It does not require a guardianship of the disabled person. Pursuant to 750 ILCS 5/513.5, there must be a disability that existed prior to the emancipation of the parties' child. In the present case, Mother has not requested Guardianship as she continues to promote her son's independence although it is clear that Guardianship will be necessary in the future. Despite pleadings and arguments by Father's counsel, there is no requirement

that there be a determination by a court of disability to invoke Section 513.5.

Next, the time to file a petition for support for a disabled adult child is not limited to the emancipation age of 18, 19 or graduation from high school. *In re Marriage of Moriarty*, 2024 IL App (1st) 230270.

We were able to prove disability through authenticated medical records from several medical care providers who supplied records with a business record authentication that demonstrated specific diagnoses that existed prior to the child turning 18 and graduation from high school. In most cases, the parties will agree to the presence of the disability as both parties are generally involved in the care and education of the child. In this case, Father disputed disability despite medical records diagnosing multiple conditions before the child turned 18 or graduated from high school. Father also disputed the relevance of the medical records. Father alleged that Mother enabled autism but failed to present any evidence to support that claim. **Practice Pointer:** Do not dispute the relevance of medical records when the medical condition of a party is at issue. Also, do not assert a claim that is not supported by a medical expert i.e. enabling of autism by a party (or anxiety, depression, etc.)

We were able to present medical records that documented the history of the adult child with hypothyroidism, autism, anxiety, and depression predating traditional emancipation and diabetes developing thereafter with treatment complicated by autism. While we had several medical care providers lined up to testify, if necessary. The court allowed the authenticated records to be admitted into evidence and deemed the foundational requirements satisfied with those certifications and that they were relevant to the ultimate issues in the case despite objections from Father's counsel. **Practice**

Pointer: Do not simply get the records by authorization or release but obtain them by subpoena so that the authentication as a business record is available.

In addition to the records, we called the disabled adult's siblings as witnesses to the limitations in his abilities and to the inability of Father to be an alternate caregiver due to his lack of involvement in recent years and his hostility to the adult child and Father's continual suggestion that Mother has caused or enabled autism. We also called friends of the family to discuss specific and significant limitations of the disabled adult.

Pursuant to the express language of 513.5, the alleged disability must have existed prior to the emancipation of the child by graduation from high school and/or turning 19. This is a very important point for a **Practice Pointer:** If you have a family with an autistic/neuroatypical child, cerebral palsy, spina bifida, learning disability, school refusal, depression and so on, please document that in the Marital Settlement Agreement and/or Allocation of Parental Responsibilities. Please note if there is an IEP, a Section 504 plan or medical diagnosis that may impede a child's ability to launch.

Once a disability has been established, the moving party must demonstrate the appropriate level of support. The first place to start is the guideline child support for income shares based upon the overnights and incomes of the parties. This is often not applicable if the disabled child is living in a group home or other housing, but if they are living with a parent, this is a good place to start.

However, what must be considered by the court is the actual cost of the care of the parties' adult child. In many cases, that includes respite care for the primary caregiver. This entire issue becomes complicated and challenging. The most important point for litigation is the question of how to prove this cost to the

Court. For this, I cannot recommend a resource like Henry aka Buddy Brennan from Rehab Assist with more enthusiasm. Dr. Brennan is a highly respected court appointed expert in guardianship cases. He is preeminently qualified to testify as to the cost of care for individuals with disabilities regarding their particular care needs and the related costs. **Practice Pointer:** Do NOT skip this. Yes, it costs money, but it is imperative to have credible expert testimony for the court to consider regarding the cost of future care.

Two things to be mindful of with respect to the determination of disability are the Social Security Disability qualifications and the Illinois PUNS list. Either one of these should be sufficient to determine disability in the more straightforward cases. If the Federal Government has determined that a person is disabled, this should truly end the dispute. Sadly, that was not the case in our case. Similarly, if the State of Illinois determines that a person qualified for the

PUNS list, that should also end the dispute as this means that the State has determined that a person is disabled and qualified for expedited housing if a caregiver/parent dies or is unable to provide assistance to the disabled person.

Practice Pointer: To retain credibility, do not dispute disability of the child who has been deemed eligible for either list/benefit.

Since *In re Marriage of Moriarty*, 2024 IL App (1st) 230270 allows support to be awarded at any time, the date for filing the petition is still very important. I do not know of a case that addresses retroactive support for an adult disabled child, however, I anticipate that it would be consistent with *Petersen*. If that is the case, it is imperative to file the petition and your client's financial affidavit as soon as possible. Some trial courts will look at that date of filing the financial affidavit for the date for retroactive support.

Important points:

The obligation to support a disabled

adult child does not end at traditional emancipation or the age of 18.

If a child has an IEP or has a documented medical disability, record it in the Marital Settlement Agreement or Allocation of Parental Responsibilities Judgment so the duplicative proof is not required.

File a Petition for Post High School Support as soon as possible so that support arrearages begin to accrue. File your Financial Affidavit immediately.

Prepare your proofs through subpoena so that all records are authenticated for financial resources and medical diagnoses.

Evaluate actual expenses for an adult disabled child to include in your financial affidavit.

Retain an expert to forecast and outline anticipated annual and monthly expenses until and even after an alternative housing plan is available.

Activate your child on the PUNS list immediately. https://www.dhs.state.il.us/page.aspx?item=85196#a_toc2 ■

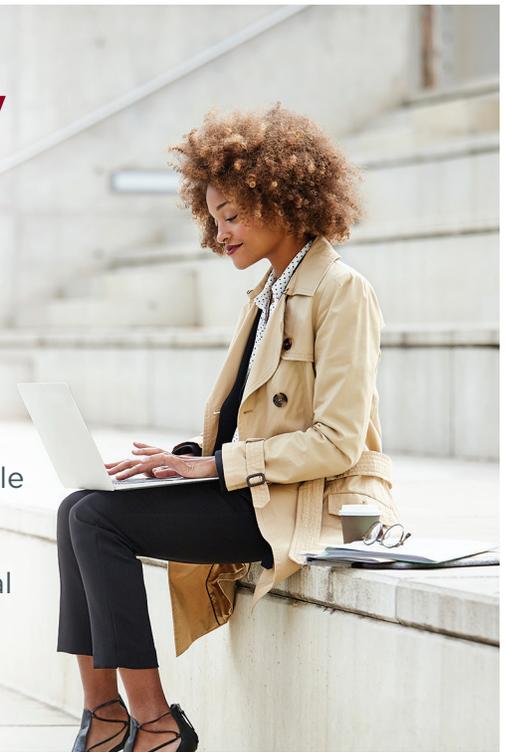
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