

## Chapter XX

### CHILD SUPPORT

2001. PURPOSE – The purpose of this Chapter is to assert tribal sovereignty to its fullest by incorporating Bay Mills Indian Community traditions, values and customs which will facilitate the stability of Indian families and the tribal community by ensuring that a parent will provide financially for their children’s needs.
2002. DEFINITIONS – As used in this Chapter, the following terms have the meanings prescribed herein:
- A. “Child” means any unmarried person under the age of 18 years, including persons who have “independent living” status under the laws of the State of Michigan, or an unmarried person who is attending high school after attaining the age of 18 who has not reached the age of 19.
  - B. “Joint Legal Custody” means an order of the Court in which it is specified that the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.
  - C. “Joint Physical Custody” means an order of the Court in which it is specified that the child shall reside alternately for specific periods with each of the parents.
  - D. “Legal Custody” means the legally acknowledged right and responsibility to make major decisions concerning a child, such as consent to marry, consent to enter military service, consent to obtain a motor vehicle operator’s license, authorization for non-emergency medical care, and the choice of school and religion.
  - E. “Nonlegal Responsible Relative” means a relative who assumes responsibility for the care of a child, excepting a relative who has physical custody during a court-order visitation period.
  - F. “Physical Placement” means the condition under which a person has a right to have a child physically placed with that person and has the right and responsibility to make, during that placement, routine daily decisions regarding the child’s care, consistent with the major decisions made by a person having legal custody.

- G. “Support” means payment of the expenses of necessary shelter, food, care, clothing, medical and dental care, child care and education.
2003. JURISDICTION – The Bay Mills Tribal Court shall have exclusive jurisdiction in the following proceedings:
- A. Actions establishing child support in which the child and mother or child and father (who has custody) resides or is domiciled on the Bay Mills Indian Reservation.
2004. JURISDICTION IN ALL OTHER ACTIONS – The Bay Mills Tribal Court shall have jurisdiction over any action brought under this Chapter to the extent not prohibited by other tribal law or federal law.
2005. TRANSFER OF JURISDICTION – The Bay Mills Tribal Court may transfer jurisdiction to the Michigan Friend of the Court for the collection of child support payment in the event that:
- A. Neither the child nor the payer continue to reside or is domiciled on the Bay Mills Indian Reservation; or
  - B. The custodial parent is receiving financial assistance under Part D of Title IV of the Social Security Act, 42 U.S.C. §§651-669b.
2006. LEGAL OBLIGATION TO SUPPORT CHILDREN – It is the legal, as well as moral, responsibility of parents to provide financially for their children’s food, clothing, shelter, medical care and general wellbeing. A parent with legal custody or with whom the child resides at least sixty (60) percent of the time is presumed to be carrying out this obligation
2007. CHILD SUPPORT ACTIONS – In addition to any criminal charge which may be instituted against a parent for failure to support his/her child, an action to compel payment of support may be brought:
- A. By the custodial parent; or
  - B. By a non-legal responsible relative.
2008. PROCEDURE FOR CHILD SUPPORT ACTIONS – A child support action is a civil proceeding, subject to the provisions under the Tribal Code, for the appropriate notice and hearing requirements.
2009. AMOUNT OF CHILD SUPPORT – After hearing, the Court shall order either or both parents to pay an amount reasonable and necessary to carry out the obligation of supporting the children. It is a rebuttable

presumption that the amount of support ordered utilizing the Michigan Child Support Formula Manual, as modified by the Child Support Formula Supplement, as amended from time to time, is the reasonable and necessary amount required, unless a party requests a modification of that standard under Section 2010, below.

2010. FACTORS FOR MODIFICATION OF STANDARD – The party requesting modification of standard shall demonstrate the current support is unfair to the child or any of the parties. Such demonstration shall be based on the following factors:
- A. The financial resources of the child;
  - B. The financial resources of both parents, including property received pursuant to a divorce decree;
  - C. Maintenance/alimony received by either parent;
  - D. The needs of each parent in order to support him/herself at a level equal to or greater than the federal poverty income standards;
  - E. The needs of any person, other than the child, whom either parent is legally obligated to support;
  - F. The desirability that the custodian remain in the home as a full-time parent;
  - G. The cost of daycare if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home;
  - H. The award of substantial periods of physical placement to both parents.
  - I. Extraordinary travel expenses incurred in exercising the right to visitation;
  - J. The physical, mental and emotional health needs of the child, including any costs for health insurance;
  - K. The child's educational needs;
  - L. The tax consequences to each parent;

- M. The best interests of the child;
  - N. The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community of residence;
  - O. The cost of substitute care ordered by a court of competent jurisdiction;
  - P. Any other factors deemed relevant by the court.
2011. ORDER DEVIATING FROM STANDARD SUPPORT – Upon determination that the application of the Michigan Child Support Formula standard would be unfair to the child or a parent, the Court may enter an order of support which establishes an amount which differs from said standard, which includes finding of fact supporting its determination.
2012. PAYMENT OF CHILD SUPPORT ORDERS – The order of support shall provide that all payments made there under shall be made to the Tribal Court.
2013. HEALTH INSURANCE AS COMPONENT OF SUPPORT – In addition to a monthly payment of support, the court may require one or both parents to obtain and maintain health care coverage that is available to them, as a benefit of employment, for the benefit of the minor children until each has graduated from high school.
2014. ORDER FOR PARENT DETERMINED UNABLE TO PAY SUPPORT – In any case in which child support is sought or enforcement of an existing child support order is requested, the Court may, if the parent is found to be unemployed and financially unable to pay support, order said parent to do any or all of the following:
- A. Register for work at a public employment office operated by the Tribe or the State of Michigan;
  - B. Apply for work;
  - C. Participate in job training programs;
  - D. Pursue an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent; and
  - E. Authorize a parent determined unable to pay support in cash to provide in lieu thereof goods and/or services, the value of which

is validated by the Court, and the usefulness of which is affirmed in writing by the child's custodian. The continued appropriateness of an authorized in lieu contribution shall be reviewed by the Tribal Court every ninety (90) days that such an order is in effect.

2015. ORDER FOR INCOME WITHHOLDING – In the absence of a finding of good cause not to issue an order for income withholding, the Court shall issue, in addition to its order of support, an order directed and served on the payer's employer, to withhold from payer's wages and salary and pay to the Bay Mills Tribal Court the child support amount ordered by the Court. The Tribal Court shall provide the employer with the notification of income withholding and the forms necessary to comply with the order of withholding (if applicable).
2016. LIMITATION ON AMOUNT OF INCOME WITHELD – The total amount of income withheld under all orders to withhold income for current support, past due support, and health care coverage premiums effective against a payer shall not exceed 50% of the payer's disposable earnings, as that term is defined in 15 U.S.C. §1672.
2017. MODIFICATION OF CHILD SUPPORT ORDER – The Court may, upon application by the parties, or Tribal Social Services, and due notice to the opposite party, revise and alter any judgment or order respecting the amount of child support which is subject to enforcement by the Court, upon a finding of a substantial change of circumstances.
- A. Circumstances Presumed to be Substantial – Any of the following constitute a rebuttable presumption of a substantial change of circumstances sufficient to justify a revision of the support judgment or order:
1. Commencement of receipt of temporary assistance for needy families by either parent since the entry of the last child support order.
  2. The expiration of 33 months after the date of entry of the last child support order, unless the amount of child support was expressed as a percentage of parental income.
  3. Failure of the payer to furnish a timely disclosure of assets.

- B. Circumstances which May be Substantial – Any of the following may constitute a substantial change in circumstances sufficient to justify a revision of the support judgment order.
  - 1. Unless the amount of child support was expressed as a percentage of parental income, a change in the payer’s income.
  - 2. Change in the needs of the child.
  - 3. Change in the payer’s earning capacity.
  - 4. Any other factor determined relevant by the Court.
- C. Circumstances Not Basis for Modification – Violation of physical placement rights by the custodian does not constitute reason for modification of child support obligations.

2018. ENFORCEMENT OF CHILD SUPPORT ORDER – An order for child support by the Bay Mills Tribal Court, or an order of any other court with personal and subject matter jurisdiction, may be enforced by the Tribal Court by any of the following proceedings:

- A. An order to show cause requiring the payer to demonstrate at a reasonable time therein specified why the payer should not be held in contempt and subject to:
  - 1. A finding of civil contempt, with a forfeiture of not less than \$50 and not in excess of \$1,500 for each contempt;
  - 2. Finding of criminal contempt, which shall subject any Indian so found to incarceration for a term of one (1) year or less.
- C. Execution of the order or judgment.
- D. Attachment of assets.

2019. CREDITS AGAINST CHILD SUPPORT AMOUNTS – It is not a valid basis for failure to pay ordered support that the custodian violates the rights of the payer to visitation and/or physical placement; however, any financial expense incurred by payer to correct such violation may be credited to the support obligation upon order of the Court.

2020. ACKNOWLEDGEMENT OF PATERNITY – The paternity of any Indian child may be established through the signing of a statement by the father and mother of the child before the Clerk of Tribal Court. The acknowledgement statement shall identify the father and mother by birth date, social security number, and residence, and shall likewise so identify the child. Upon receipt of such statement, witnessed by the clerk, a judge of the Bay Mills Tribal Court may enter an order of filiation.
2021. PAYMENT PLAN FOR ARREARAGES – A payer who has an arrearage under a support order may seek, or the court may provide under Section 2017, above, a payment plan to pay arrearages. The Court shall approve the payer's proposed payment plan after notice and hearing if it finds by a preponderance of the evidence that the plan is in the best interest of the parties and the children, that the arrearage did not arise from conduct by the payer engaged in exclusively for the purposes of avoiding a support obligation, and that either of the following applies:
- A. The arrearage is owed to an individual payee, and that payee has consented to entry of the payment plan and the Court is satisfied that the payee is not acting out of fear, coercion or duress; or
  - B. The arrearage is owed to the Tribal Court, the State of Michigan, or to a political subdivision of the State, and the payer has no present ability, and will not have an ability in the foreseeable future, to pay the arrearage absent a payment plan, and the proposed payment plan will pay a reasonable portion of the arrearage over a reasonable period of time in accordance with the payer's current ability to pay.