What Happens to Child Support When a Disabled Child Becomes an Adult?

In New Jersey, child support is paid either directly between parents, or through the New Jersey Family Support Payment Center (“NJFSPC”) sometimes referred to as “Probation.” Under a new law passed in 2017, NJFSPC can no longer collect and administer child support once a child reaches age 19, except in certain limited circumstances. If a child is disabled, NJFSPC can continue collecting child support until the child is 23, but not beyond that, regardless of the circumstances.

So, what happens to support when a child turns 23? At that point, there is still a way to obtain support from a non-custodial parent for an adult child who is disabled, but it is no longer called child support; instead, further court-ordered support by a parent is referred to as “financial maintenance.”

For children already receiving child support, an application to convert it to financial maintenance can be made in the Family Part of the NJ Superior Court. For other children, who are declared incapacitated by a court, and a guardianship has issued, the application for financial maintenance is made through the Probate Part.

Unlike child support, there are no formulas or charts that calculate financial maintenance. The new law allows child support to be “converted” to financial maintenance, but that does not necessarily mean the same amount would be ordered. Courts must have detailed information about the child’s needs and the family’s resources, so an application for financial maintenance should include a Family Part Case Information Statement detailing household incomes, assets, debts and expenses.

Parents should take care to avoid conflicting with other forms of financial assistance for disabled adults. For example, Supplemental Security Income (SSI) and Medicaid benefits for a disabled adult child may be reduced or entirely eliminated by financial maintenance, depending on how those funds are paid. In contrast, financial maintenance does not affect Disabled Adult Child (DAC) benefits, which are not means-tested.

Some people mistakenly interpret this law to mean that 19-year-olds are emancipated. That is not the case. The law says nothing about emancipation – it applies to the authority of courts to order child support and to NJFSPC ability to keep collecting it.

In order to stop **paying support** for someone over 18, a parent must prove the **child can** live alone. Information on the **child's** work history and life skills may show a**child can** live alone. Only some courts **will** issue a new **child support** order for a**disabled child** after the **child** is 18.

For more information about the new child support termination statute, please see the website of the New Jersey Office of Child Support Services [Termination Frequently Asked Questions (FAQs)](https://www.njchildsupport.org/Services-Programs/Custodial-Parents/Termination/Termination-FAQs).

***When does child support end for dependent disabled adult children?***

Under the child support termination statute, child support will end at the age of 19 unless a court orders another date. If a parent provides the court with documents showing that a state or federal agency has determined that the child is disabled, the court may allow child support to continue beyond the age of 19. See [New Jersey’s New Child Support Termination Law](https://www.lsnjlaw.org/Family-Relationships/Child-Support/General-Information/Pages/Child-Support-Termination-Law.aspx) for more details on applying to continue child support beyond age 19, and for details on what happens when child support is terminated.

Child support will end on (or before) the child’s 23rd birthday, even when an adult child is eligible for child support beyond age 19, due to the child’s disability. There is no way to continue child support beyond the child’s 23rd birthday. But an adult disabled child may be eligible for financial maintenance from the non-custodial parent.

**Converting child support to financial maintenance.** For disabled adult children 23 or older, either the child or the parent may apply to convert the child support to ongoing support from the non-custodial parent, which is called “financial maintenance.”

***What is financial maintenance?***

Financial maintenance is a new legal term that was created in the child support termination statute. It means the financial support that a parent is ordered to pay for the benefit of a dependent adult child after the age of 23. There are some key differences between financial maintenance and child support.

The primary difference is that child support is usually collected and enforced through Probation in New Jersey. Financial maintenance cannot be enforced or collected through Probation.

For child support, Probation has many extraordinary collection tools that are not available for enforcing other debts, such as tax offsets and license suspensions.

***Where do I file for financial maintenance?***

If the disabled adult child has been declared incapacitated by a court, and letters of guardianship issued, a motion to convert child support to financial maintenance should be filed in the New Jersey Superior Court–Probate Part through the Surrogate’s Office.

If there is no guardianship over the disabled adult child, the request by the parent or adult child to convert child support to financial maintenance should be filed in the New Jersey Superior Court–Family Part.

***How much financial maintenance will be awarded?***

In New Jersey, there are charts and a mathematical formula to determine how much child support should be paid, based primarily upon the incomes of both parents. These are called the Child Support Guidelines.
There are no guidelines for financial maintenance and there is no law that specifically allows courts to use the Child Support Guidelines to determine the amount of a financial maintenance award.

The child support termination statute says child support may be “converted” to financial maintenance. This suggests (but does not clearly state) that the amount of child support at the time of conversion will be applied to the financial maintenance.

The parent or child applying for financial maintenance should include a case information statement  to detail the household income, expenses, assets, and liabilities. This will help the court assess how much to award for financial maintenance. Be sure to include any expenses that are required because of the child’s disability. You may find the case information statement in the [Self-Help Resource Center](https://www.njcourts.gov/selfhelp/index.html) on the New Jersey Judiciary’s website, .

You may request that the financial maintenance be the same amount as the child support was, or you may ask for an increase. But you will need to show the court why an increase makes sense (for example, a change in the income of one or both of the parents, another change in circumstances, additional expenses in caring for the disabled adult child).

***How will financial maintenance impact benefits from the Social Security Administration?***

To avoid the partial or complete loss of SSI benefits, when requesting financial maintenance (or modification of financial maintenance) you may request that instead of the financial maintenance being paid directly to the child or the parent, that it be paid to either an ABLE account set up for the disabled adult child, or directly to a third-party vendor for services (car insurance, cell phone provider, school tuition, etc.).

ABLE accounts were recently introduced under federal law to allow disabled adults (who became disabled before age 26) to maintain eligibility for disability-related benefits (such as SSI) while having access to funds that may be used for disability-related expenses (including housing and transportation). See [Achieving a Better Life Experience Act (ABLE) Accounts: What You Need to Know](https://www.lsnjlaw.org/Disability/SSDI-SSI/Pages/ABLE-Accounts.aspx) for more information.

 (c) has a physical or mental disability as determined by the federal or state governmental agency existing prior to the child reaching age 19 and requiring continued child support. The purpose of *Rule*4:86-7A was to set forth the process and procedure to be filed for an application for conversion of a child support obligation for an alleged or adjudicated incapacitated person who has reached the age of 23 to another form of financial maintenance pursuant to the aforementioned statute. First, the Rule distinguishes between whether there has or has not been an adjudication of incapacity of the person for whom financial maintenance is being sought. If there has not already been an adjudication of incapacity, the plaintiff filing a complaint for adjudication of incapacity and the appointment of a guardian pursuant to *Rule*4:86-2 may request such conversion in a separate count of the complaint. If there has already been an adjudication of incapacity, a guardian or custodial parent of that adjudicated incapacitated person may request such conversion by filing a motion on notice to the parent responsible for paying child support and any interested parties setting forth the basis for relief requested pursuant to *Rule*4:86-7. In either event, the application shall set forth the exceptional circumstances pursuant to which such conversion is requested and shall annex thereto copies of any Chancery Division, Family Part orders relating to to the child support obligation, as well as a financial maintenance statement in such form as may be promulgated by the Administrative Director of the Courts.

Where should such actions or applications be brought? One must refer back to the provisions of *Rule*4:3-1(4) which was also recently adopted and which was discussed at length in one of my recent blog posts. Under *Rule*4:3-1(4)(I) where the action affects support and the incapacitated child has turned age 23, such matters are to be filed and heard in the Chancery Division, Probate Part. This is to be distinguished from actions which affect support where the incapacitated child has not yet turned 23, in which case such matters are to be filed and heard in the Chancery Division, Family Part. Curiously, that Rule also provides that if an application is filed relating to the support of an incapacitated child over the age of 23 and either parent remains subject to a Family Part support or financial maintenance order relating to other dependents, the support issue for the incapacitated child shall still be determined in the Chancery Division, Family Part.

What does all this mean? *Rule*4:86-7(A) and *Rule* 4:3-1(4)(I) relate to circumstances involving an incapacitated adult child, as well as in circumstances where that child has already been adjudicated incapacitated, or the application for support/financial maintenance is being made in conjunction with an action to adjudicate incapacity. This is about converting a child support obligation to another form of financial maintenance in such circumstances. These rules do not affect applications by or on behalf of a non-incapacitated child who is beyond 23 years of age from seeking a court order requiring the payment of other forms of financial maintenance or reimbursement from a parent as authorized by law to the extent that such financial maintenance or reimbursement is not payable or enforceable as child support, and as may be authorized under N.J.S.A. 2A:17-56.67(e)(1) which would still be heard in the Chancery Division, Family Part. The point of all of these changes seems to be that while there are circumstances whereby a child will still require “financial maintenance”, when incapacity is involved, when a child reaches a certain age, those proceedings and determinations would fall within the purview of the courts that normally hear such incapacity matters – namely the Chancery Division, Probate Part. Again, a significant aspect of this year’s Rule Amendments is to clarify which types of actions are cognizable where. My recent blog posts serve to highlight these changes, particularly as they may impact upon Family Part practice.

4:86-7A. Application for Financial Maintenance for Incapacitated Adults Subject to Prior Chancery Division, Family Part Order As to a person alleged or adjudicated to be incapacitated as defined in N.J.S.A. 3B:1-2 and who has reached the age of 23, an application for conversion of a child support obligation to another form of financial maintenance pursuant to N.J.S.A. 2A:17- 56.67 et seq. may be made as follows: (a) Prior to Adjudication of Incapacity. A plaintiff filing a complaint for adjudication of incapacity and appointment of guardian pursuant to R. 4:86-2 may request such conversion in a separate count of the complaint. (b) After Adjudication of Incapacity. A guardian or custodial parent of an adjudicated incapacitated person may request such conversion by filing a motion on notice to the parent responsible for paying child support and any interested parties setting forth the basis for the relief requested pursuant to R. 4:86-7. (c) Required Materials for Submission. Any action brought pursuant to either paragraph (a) or paragraph (b) shall set forth the exceptional circumstances pursuant to which such conversion to another form of financial maintenance is requested and shall have the following annexed thereto: (1) Copies of any prior Chancery Division, Family Part orders related to the child support obligation; and (2) A financial maintenance statement in such form as promulgated by the Administrative Director of the Courts. Note: Adopted July 27, 2018 to be effective September 1, 2018.

How Does the New Statute Affect Disabled Children Past the Age of 23?

Section (e) of the new child support statute states that the obligation of a parent to pay child support terminates “by operation of law” when a child reaches 23. However, the statute also states that section (e) should not be construed to mean that a child beyond the age of 23 cannot seek a court order requiring other forms of financial maintenance or reimbursement from a parent.

Further, the section also notes that New Jersey courts are not prevented from converting a child support obligation to another form of financial maintenance for a child past the age of 23 if exceptional circumstances are involved. This section explicitly mentions a “mental or physical disability” as examples, only, as to exceptional circumstances that may justify converting child support to another form of financial maintenance for children who reach 23 years of age.

In short, then, it appears that the new statute will free New Jersey Probation Departments from the need to enforce child support obligations for disabled children who reach 23 years of age, while still ensuring there is a mechanism in place for those children and their custodial parent to still receive financial support.

For the time being, the issue of emancipation – which is a standard used to determine whether children are capable of living independently from their parents -was left untouched by the New Jersey statute, meaning the standard set forth by New Jersey family courts is still in effect. As such, a child who is physically disabled or is otherwise unable to support himself can still be a child support obligation, which tracks with current New Jersey statutory law as well.

New Jersey parents are financially obligated to provide child support for an un-emancipated child, which does not terminate based on a child’s age if the child has a “severe mental or physical incapacity” that causes the child to rely on parents for financial help.

In short, then, if parents agree that the child is not emancipated or the court rules a child is not emancipated, some form of financial maintenance will still be required for a disabled child, even if they have reached 23 years of age.

This analysis leads to important questions about actions New Jersey parents should take for a disabled child’s governmental benefits access.

New Jersey Parents May Wish to Create a Trust for a Disabled Child

The previous analysis underscores the fact that alternative paths of financial maintenance exist for disabled children beyond simply providing “child support”. New Jersey parents, for example, can help their disabled child by potentially creating a special needs trust, which is arguably one of the best decisions parents can make. An individual should contact a trust and estates lawyer to discuss this concept.

This assertion is based primarily on how New Jersey law and government benefits programs view “unearned income”. For example, supplemental security income (SSI) is a federal disability program designed to compensate individuals who are either 65 or older, blind or disabled.

If your child meets SSI disability standards, it is essential to understand that child support is counted as unearned income for the purposes of receiving SSI since New Jersey views child support payments to a parent as belonging to “the child”. Therefore, receiving too much “unearned income” in the form of child support could disqualify a disabled child from receiving SSI benefits or reduce their benefits.

Creating a special needs trust will help prevent an unnecessary disqualification that preserves a child’s ability to remain eligible for SSI income. Creating such a trust is legal if drafted correctly, under both federal and New Jersey law, and federal and New Jersey statutes clearly indicate that special needs trust contents cannot be viewed as assets when the government makes an SSI eligibility determination.

This is a great help to a disabled child and their loved ones since qualifying for SSI can also help the individual automatically receive Medicaid.

Talk to a qualified estate lawyer and request a legal consultation to learn more about creating a special needs trust and why doing so may well be in your family’s best interests.