

Comment,
A SURVEY OF POST-MAJORITY CHILD
SUPPORT FOR ADULTS WITH
IMPAIRMENTS

I. Introduction

Child support for adults – this controversial topic is just as quirky as it sounds and the rules vary from state to state. There are, however, two common instances in which courts have ordered child support continuing past the age of majority – higher post-secondary education and disability. This article will focus on the fifty states’ various approaches to the latter exception. “Laws that impose a duty to support adult disabled children are potentially relevant to a broad class of Americans, as nearly one-third of families include at least one disabled member.”¹

For a quick reference to each state’s view on post-majority support, please see the table included at the end of this survey.

II. Disabilities in the Post-Majority Child Support Context

“Disability” is often defined by courts in “economic terms, i.e., the inability of the adult disabled child to adequately care for himself/herself by earning a living by reason of mental or physical infirmity.”² The Americans with Disabilities Act defines a person with a disability as a person who has “a physical or mental impairment that substantially limits one or more major life activities,” similar to many state statutes such as the one in Illinois.³ While some states include alcohol and or drug addiction as a disability, a number of states, for purposes of post-majority support, have specifically discounted substance abuse as a disability. For

¹ Sande L. Buhai, *Parental Support of Adult Children with Disabilities*, 91 MINN. L. REV. 710, 720–21 (2007).

² Laura W. Morgan, *The Duty to Support Adult Disabled Children*, 9 DIVORCE LITIG. 185, 187 (Oct. 1997).

³ 42 U.S.C. § 12102 (2016); 750 ILL. COMP. STAT. ANN. § 5/513.5 (2016) (“A ‘disabled’ individual means an individual who has a physical or mental impairment that substantially limits a major life activity, has a record of such an impairment, or is regarded as having such an impairment.”).

example, Louisiana's child support statute has a specific provision that post-majority child support is "not intended to cover a child's alcohol or substance abuse or addiction."⁴ Similarly, a New Jersey statute states that "'severe mental or physical incapacity' shall not include a child's abuse of, or addiction to, alcohol or controlled substances."⁵ The obvious policy reason behind the majority of states allowing this exclusion is the self-infliction of an alcohol—or drug—caused disability as opposed to mental or physical disabilities that people are born with or incur involuntarily during their lifetime. In comparison, Montana includes in its definition of an "incapacitated person" chronic use of drugs and chronic intoxication to the point that "the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the person or which cause has so impaired the person's judgment that the person is incapable of realizing and making a rational decision with respect to the person's need for treatment."⁶

Under common law, parents have an obligation to support their minor children until the children reach the age of majority.⁷ The age of majority is when a child is capable of self-sufficiency. However, what if the child is mentally and or physically disabled and unable to support him or herself? Why might an adult with disabilities need support? The need for post-majority child care includes both the relevant health care costs and home-care costs to assist with the disability.⁸ In addition, people with disabilities may lose out on wages, since their rates of unemployment are significantly higher than average.⁹ Additionally, there are two public policy rationales for extending the obligation of child support to mentally or physically disabled children beyond the age of majority: "(1) the natural obligation of parents to support their children, and (2) the need to protect the public from the burden of supporting a person who has a parent . . . able to sup-

⁴ LA. STAT. ANN. § 9:315.22 (2016).

⁵ N.J. STAT. ANN. § 2A:34-23 (2014).

⁶ MONT. CODE ANN. § 72-5-101(1) (2009).

⁷ Morgan, *supra* note 2, at 880.

⁸ Anna Stepien-Sporek & Margaret Ryznar, *Child Support for Adult Children*, 30 QUINNIPIAC L. REV. 359, 363 (2012).

⁹ *Persons with a Disability: Labor Force Characteristics Summary*, U.S. BUREAU OF LABOR STATISTICS (2016), <https://www.bls.gov/news.release/disabl.nr0.htm> (last visited Feb 3, 2017).

port him.”¹⁰ However, the states’ approaches to this controversial topic are neither “uniform nor universal.”¹¹

III. The Majority of States Allow Disabled Adult Children to Receive Child Support

Many states hold that parents must provide child support to a disabled adult. “In such proceedings for dissolution of marriage, legal separation, or child support, post-majority support may be ordered just as regular child support would be ordered for a minor child.”¹² In the most commonly cited case, *Ex parte Brewington*, the Supreme Court of Alabama held that when “the adult child is so mentally and/or physically disabled as to be unable to support himself” there is an exception to the common law rule that the non-custodial parent did not have an obligation to support his or her adult child.¹³ The court did not limit the definition of “children” to only minor children but included “dependent children regardless of whether [such] dependency resulted from minority or physical and mental disability that render them incapable of self-support beyond minority.”¹⁴ However, the majority of states that allow post-majority child support, either by statute, common law, or both, are divided on *when* the child support is allowed – if the disability presents itself before or after the child reaches the age of majority. The policy behind many of these statutes is that “[p]ostmajority child support aids substantially in reducing the financial burden on custodial parents who continue to care for their children who suffer from disabilities after their children have reached the age of majority.”¹⁵

¹⁰ Buhai, *supra* note 1, at 737–38.

¹¹ Stepien-Sporek & Ryznar, *supra* note 8, at 360.

¹² *Id.*

¹³ Katherine Ellis Reeves, *Post-Majority Child Support Awards for Disabled Children: A Fifty State Survey*, 8 WHITTIER J. CHILD & FAM. ADVOC. 109, 111 (2008).

¹⁴ *Ex parte Brewington*, 445 So. 2d 294 (Ala. 1983).

¹⁵ Katherine Byrns, *Postmajority Child Support for Children with Disabilities*, 51 FAM. CT. REV. 502 (2013).

A. *States Requiring Child's Disability to Present Prior to Reaching Majority Age*

Twenty-three states (Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Indiana, Kentucky, Massachusetts, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas, Vermont, Virginia, Washington, West Virginia, and Wyoming) require that for the child to be eligible for post-majority child support, the child's disability must have had its onset during the child's minority years. "Parents are under legal, as well as moral obligation to educate and support their children during their disability."¹⁶ Although some states have statutes that only apply when the "courts extend a current order or when the disability arose prior to the child's majority," more states recognize a common law duty to support adult disabled children.¹⁷ This exception recognizes that a "duty to support a child continues into the child's adulthood if that child was disabled prior to reaching majority."¹⁸ The theory behind this stance is that when a child is disabled prior to post-majority age, "his parents may expect that he will not be able to support himself as an adult . . . [and] may be willing and prepared to continue their support into adulthood."¹⁹

Normally, there is a rebuttable presumption that a parent is not required to pay child support for an adult child. However, if the child is disabled after becoming an adult, he or she is not eligible for support.²⁰ In states with this presumption, children are emancipated once they have reached the age of majority, and "a subsequent disability will not resurrect a parental duty."²¹ The Supreme Court of Colorado has coined the term "delayed emancipation," meaning that reaching the age of majority only creates a *presumption* of emancipation.²² If the child is not in fact capable of independent self-support because of a disability, he or she is not emancipated.²³ "If a child is physically or men-

¹⁶ *Goodyear v. Goodyear*, 126 S.E.2d 113 (N.C. 1962).

¹⁷ *Buhai*, *supra* note 1, at 724-26.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Stytle v. Shaub*, 955 A.2d 403, 408 (Pa. Super. Ct. 2008).

²¹ *Id.*

²² *Koltay v. Koltay*, 667 P.2d 1374, 1376 (Colo.1983).

²³ *Smith v. Smith*, 447 N.W.2d 715, 738 (Mich. 1989).

tally incapable of self-support when he attains the age of majority, emancipation does not occur, and the duty of parental support continues for the duration of the child's disability."²⁴

Most jurisdictions hold that where an adult is "of weak body or mind, unable to care for itself after coming of age, the parental rights and duties remain practically unchanged and the parent's duty to support the child continues as before" the child reached adulthood.²⁵ The states that hold that the financial obligation between parents and their disabled child should be maintained after the child reaches the age of majority typically limit that obligation to situations in which "(a) the child is incapable of earning a livelihood, and (b) the parent has the ability to provide assistance."²⁶ Given that the parents have held this financial duty prior to the child reaching the age of majority, public policy dictates that parents should continue to bear this burden, thus alleviating the possibility of the burden landing on society. Since the disability was present while the child was still a minor, parents will be more adequately prepared for the possibility of continuing financial care, as opposed to a disability onset after the age of majority, where the financial burden had already ended and would suddenly restart. In an Indiana case, *Liddy v. Liddy*, an adult child who suffered from schizophrenia, the onset of which occurred when he was sixteen years old, was not able to attend college or work full-time, and therefore, the child's father was required to pay child support as the Indiana statute states that incapacity of a child continues the duty of child support.²⁷

States that require onset of disability prior to age of majority recognize, in both common law and state statutes, a duty for continued support. As seen above, the statutes "apply only when the courts extend the current order or when the disability arose prior to the child's majority."²⁸ However, most states in this category rely on the common law.²⁹

²⁴ *Id.*

²⁵ *Fincham v. Levin*, 155 So. 2d 883, 884 (Fla. Dist. Ct. App. 1963).

²⁶ *Id.*

²⁷ IND. CODE ANN. § 31-16-6-6 (2012); *Liddy v. Liddy*, 881 N.E.2d 62 (Ind. Ct. App.), *transfer denied*, 891 N.E.2d 48 (Ind. 2008).

²⁸ *Buhai*, *supra* note 1, at 724.

²⁹ *Id.* at 726.

438 *Journal of the American Academy of Matrimonial Lawyers*

The common-law duty imposed on parents to support their minor children may be found by a court of domestic relations having jurisdiction of the matter to continue beyond the age of majority if the children are unable to support themselves because of mental or physical disabilities which existed before attaining the age of majority.³⁰

The Alabama Supreme Court, for example, held in *Brewington* that “parents have a financial obligation to continue support[ing] [their] children who continue to be disabled beyond their minority.”³¹ Similarly, the New Mexico Court of Appeals held in *Cohn v. Cohn* that parents continue to have a common law duty to continue support for a disabled adult child until the need for support ends.³² In Oklahoma, the child’s disability “or the cause of the disability is known to exist” must occur before his eighteenth birthday for the court to submit a child support order.³³ In *In re Marriage of Patrick*, a father was unable to establish his child’s disability or its cause existed before the child turned eighteen, and therefore, the child was not qualified for child support.³⁴ Arizona clearly states in its child support statute that if a child has a mental or physical disability demonstrating the child’s inability to “live independently and be self-supporting” and that the “disability began before the child reached the age of majority,” then the child is eligible for post-majority child support. Similar to Arizona, Arkansas recognizes a parent’s duty to pay child support for a mentally or physically disabled adult child.³⁵ However, this duty stems from a common law duty to support a disabled child, superseding a statute that stated a parent’s duty only lasted until the age of majority.³⁶ In *Guthrie v. Guthrie*, the court ordered a father to pay child support for his adult son who had autism and resided with his mother.³⁷ The court found that his “common-law obligation to support [his] au-

³⁰ *Castle v. Castle*, 473 N.E.2d 803, 806–07 (Ohio 1984).

³¹ *Brewington*, 445 So. 2d at 296–97.

³² *Cohn v. Cohn*, 934 P.2d 279, 281 (N.M. Ct. App. 1996).

³³ OKLA. STAT. ANN. tit. 45, § 112.1A (West 2006); Buhai, *supra* note 1, at 729.

³⁴ 377 P.3d 176 (Okla. Civ. App. 2016).

³⁵ *Miller v. Arkansas Office of Child Support Enforcement*, 458 S.W.3d 733 (Ark. Ct. App. 2015).

³⁶ *Id.*

³⁷ 455 S.W.3d 839 (Ark. App. Ct. 2015).

tistic son did not automatically terminate when [the] son reached age of majority,” that the son was disabled before reaching the age of majority, and that the son had a continuing need of support from his father.³⁸ In Kentucky, a severely handicapped child who was wholly dependent on her parent was deemed not emancipated by operation of law.³⁹ In a similar case, despite being denied Social Security benefits, an adult daughter was able to receive child support since she was completely dependent on her parents and could not perform even the simplest activities (such doing laundry) on her own.⁴⁰

B. States Without a Requirement of a Child's Disability Presenting Before Reaching the Age of Majority

Nineteen states (California, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, New Hampshire, Oregon, South Carolina, South Dakota, Tennessee, and Utah) hold that “once a child reaches majority and becomes emancipated, a subsequently arising disability can revive the parental duty of support.”⁴¹ A common theme among courts that support this position is parents’ “compelling moral duty to care for their adult disabled children.”⁴² South Carolina courts have stated that this obligation is “in the best interest of the children and the state, and it is conducive to the welfare of the family.”⁴³ Additionally, as a public policy matter, these states do not want to burden society with this financial obligation when the disabled individual has a parent or parents capable of supporting him.⁴⁴ A Utah statute makes it clear that a child “of any age who is incapacitated from earning a living . . . is not able to support [him or her]self by own means.”⁴⁵ However, it is important to note that in comparison to states that have such a requirement, parents whose child’s disability emerges after the age of majority are not prepared for the recur-

³⁸ *Id.*

³⁹ *Abbott v. Abbott*, 673 S.W.2d 723 (Ky. Ct. App. 1983).

⁴⁰ *Nelson v. Nelson*, 287 S.W.3d 667 (Ky. Ct. App. 2009).

⁴¹ *Buhai*, *supra* note 1, at 731.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ UTAH CODE ANN. § 78B-12-102 (2015).

ring financial burden. In response, statutes and common law in this category have developed so that courts will consider the parents' financial situation as well as any change in financial circumstances.⁴⁶ As a matter of public policy, courts do not want to lay an "intolerable burden in maintaining the support" of a disabled child on a parent or parents who would not have the ability to do so.⁴⁷ In a Montana case, the court found that a father was required to make child support payments to his eighteen-year-old son who suffered from myriad mental and physical disabilities on the basis of the state's public policy to require parents to care for adult children who are unable to care for themselves.⁴⁸ Maryland courts take several factors into account when deciding if there is a duty to support an adult child, including means of subsistence, inability to be self-supporting due to mental or physical disability, and total expenses, including medical expenses.⁴⁹ However, whether an individual is emancipated for child support purposes depends on the facts and circumstances of each case.⁵⁰

This group of states finds support for their position on post-majority support through specific statutes, common law, or imposition through an existing poor law. Poor laws stem from English common law that sought to deter fathers from abandoning or refusing to support their minor children, saving single mothers and children from poverty as well as limiting welfare expenses. "These statutes tend to have very clear, concise language that leaves little room for judicial discretion to negate the duty to support adult disabled children."⁵¹ For example, Delaware's poor person statute states:

the duty to support a poor person unable to support himself/herself rests upon the spouse, parents, or children, in that order, subject to § 504 of this title as to expenses described therein. If the relation prior in order shall not be able, the next in order shall be liable, and several relations of the same order shall, if able, contribute according to their means.⁵²

⁴⁶ Buhai, *supra* note 1, at 732.

⁴⁷ *Id.*

⁴⁸ Maberry v. Maberry, 598 P.2d 1115 (Mont. 1979).

⁴⁹ Presley v. Presley, 500 A.2d 322 (Md. Ct. Spec. App. 1985).

⁵⁰ Maki v. Hansen, 694 N.W.2d 78 (Minn. Ct. App. 2005).

⁵¹ Buhai, *supra* note 1, at 731.

⁵² DEL. CODE ANN. tit. 13, § 503 (1995).

Similarly, New Hampshire's poor law provides that "[e]very person whose income or other resources are more than sufficient to provide for his or her reasonable subsistence compatible with decency or health owes a duty to support or contribute to the support of his or her wife, husband, child, father or mother when in need."⁵³ Oregon imposes a duty on parents to "maintain their children who are poor and unable to work to maintain themselves."⁵⁴ This duty exists independent of any decree or provision stating otherwise.⁵⁵

Missouri makes its support of post-majority awards explicit within the state statute. Missouri Revised Statute § 452.340 states that "if the child is physically or mentally incapacitated from supporting himself and insolvent and unmarried, the court may extend the parental support obligation past the child's eighteenth birthday."⁵⁶ In *Lueckenotte v. Lueckenotte*, the disabled adult child received Social Security income, but he still required more funds to provide for his personal needs and therefore was deemed unable to support himself and insolvent as required under the statute.⁵⁷ In comparison, in the California case *In re Marriage of Cecilia and David W.*, an adult child who had Tourette's syndrome, attention deficit hyperactivity disorder, and panic attacks was not entitled to child support.⁵⁸ The court found that he was able to earn a living because he was attending college, lived independently, and showed his ability to perform adult functions such as driving, and therefore did not meet the statutory requirement of being "incapacitated from earning a living."⁵⁹ Similarly, in *In re Marriage of Thurmond*, an Illinois case, the court determined that the son was not disabled under the Illinois Marriage and Dissolution of Marriage Act because he graduated from high school with adequate grades, applied and was admitted into community colleges, and "was able to obtain

⁵³ N.H. REV. STAT. ANN. § 546-A:2 (2016).

⁵⁴ OR. REV. STAT. ANN. § 109.010 (2016).

⁵⁵ *State ex rel. Adult & Family Servs. Div. v. McDonald*, 601 P.2d 875 (Or. Ct. App. 1979).

⁵⁶ MO. REV. STAT. ANN. § 452.340(4) (2016).

⁵⁷ 34 S.W.3d 387 (Mo. 2001).

⁵⁸ CAL. FAM. CODE ANN. § 3910 (West 1994); 194 Cal. Rptr. 3d 559, 241 Cal. App. 4th 1277 (Cal. Ct. App. 2015).

⁵⁹ *Id.*

employment to earn money to assist in his postsecondary education.”⁶⁰

The District of Columbia imposes a common law duty on parents to support a physically or mentally disabled child after he or she reaches the age of majority.⁶¹ In *Nelson v. Nelson*, the court ordered a father to pay \$100 per month for his mentally disabled adult daughter since she was unable to support herself, making an exception to the general rule that typically the termination of child support would occur at age twenty-one.⁶² South Dakota does not have a statute that extends child support past the age of majority. “However, courts may order parents to support their adult disabled children because the children are as helpless and incapable as infants.”⁶³ Tennessee has indicated similar views on post-majority support, stating that the parents’ duties should not change following the attainment of majority age when a child is disabled.⁶⁴

IV. A Minority of States Do Not Extend Child Support Obligations for Parents of Disabled Adult Children

Nine states explicitly follow the traditional common law rule that parents’ duty to pay child support ends after their child reaches the age of majority, regardless of any disability.³⁶ These states are Georgia, Kansas, Maine, Michigan, Nebraska, New York, North Dakota, Rhode Island, and Wisconsin. In these states, families, not the court, decide whether and on what conditions they should continue to support their disabled child beyond majority or, in cases where disability arises post-majority, whether support should resume. The statutes and the common law of these states reflect a purposeful “hands-off” approach.⁶¹ Most of these states’ laws clearly and concisely terminate parents’ legal duty to their child, regardless of disability, once that

⁶⁰ *In re Marriage of Thurmond*, 715 N.E.2d 814 (Ill. App. Ct. 1999).

⁶¹ *Nelson v. Nelson*, 548 A.2d 109 (D.C. 1988).

⁶² *Id.* at 111.

⁶³ Buhai, *supra* note 1, at 736 (citing *Mower v. Mower*, 199 N.W. 42, 42 (S.D. 1924)).

⁶⁴ *Sayne v. Sayne*, 284 S.W.2d 309, 311-12 (Tenn. 1955).

child reaches majority.⁶⁵ Additionally, through strict statutory construction, these states “will not find a duty if the relevant child support laws do not specifically impose this obligation on parents.”⁶⁶

Some of these states have explicit statutory provisions in opposition to post-majority support. Georgia’s state statute clearly indicates that a parent’s obligation for “maintenance, protection and education of his child ceases when a child becomes 21 years of age and not excepting children of majority age who are mentally ill, barring the right of adult children to recover support from his father beyond age 21.”⁶⁷ The court declined to make an exception for a disabled adult child where the statute did not provide one.⁶⁸ In North Dakota, the child support statute for post-majority support does not mention disability, but explicitly states that an order of child support ends following the attainment of majority age or upon graduation from high school.⁶⁹ Similarly, a Wisconsin statute specifically says that parents do not have a duty to support *any* child who has reached majority.⁷⁰ In *Schmitz v. Schmitz*, the court held that while “some states have held that parents do not have any common-law duty to support their adult disabled children . . . such a duty may be imposed only by statute. Age of Majority Act impliedly repealed section providing for duty, and hence there is no duty.”⁷¹ In comparison, Kansas common law, as opposed to a specific statutory provision, removed any requirement for a parent to provide child support to a disabled adult child.⁷²

Other states presume legislative intent of purposefully not including a post-majority support provision when such an exception is not delineated by statute, including Maine, Michigan, and New York. In *Lund v. Lund*, a Maine court, finding no provision allowing child support for a disabled child past the age of majority or for a child to attempt to enforce such a duty, declined to

⁶⁵ Buhai, *supra* note 1, at 721–22.

⁶⁶ Byrns, *supra* note 15, at 505.

⁶⁷ Crane v. Crane, 170 S.E.2d 392 (Ga. 1969).

⁶⁸ *Id.* at 393.

⁶⁹ N.D. CENT. CODE ANN. § 14-09-08.2 (2015).

⁷⁰ WIS. STAT. ANN. § 767.25(4) (2016).

⁷¹ 236 N.W.2d 657 (Wis. 1975).

⁷² *In re Marriage of Doney and Risley*, 201 P.3d 770, 773 (Kan. Ct. App. 2009).

allow the parties' disabled daughter to receive an award of child support from ages nineteen to twenty-one.⁷³ Michigan courts have employed a strict view on the definition of a "minor child" within their child support statutes. In *Smith v. Smith*, the court focused on the legislature's use of the term "authoriz[ed] support payments for the benefit of minor children only" and refused to include mentally or physically disabled adults in the "exceptional-circumstances clause" of the child support statute.⁷⁴ However, the dissent in this case noted that the exceptional-circumstances clause did not specifically refer to minor children, "but expressly provide[d] for support for *any* child beyond the age of eighteen upon a showing of exceptional circumstances."⁷⁵ New York amended its child support laws to remove an obligation to support disabled children following the child turning twenty-one.⁷⁶ The legislature based this upon public policy that "such support often placed a heavy burden on families, and this burden was more often destructive to the family unit than cohesive."⁷⁷ In *Belter v. Belter*, the New York Supreme Court held that without any prior agreement between the parents, there was no statutory provision that allowed for post-majority support for disabled children.⁷⁸

Rhode Island takes a more lackadaisical approach to post-majority support than the other states mentioned above. While the Rhode Island courts do not typically allow child support to continue past the age of emancipation (age eighteen), a state statute does allow an adult child with severe mental or physical impairments to receive child support, but the award will cut off at his or her twenty-first birthday.⁷⁹ The court may consider the following factors:

- (1) the nature and extent of the disability;
- (2) the cost of the extraordinary medical expenses;
- (3) the ability of the child to earn income;
- (4) the financial resources of the child;
- (5) the financial resources of the parents;
- (6) the inability of the primary caregiver of the child to sus-

⁷³ *Lund v. Lund*, 927 A.2d 1185, 1190 (Me. 2007).

⁷⁴ *Smith v. Smith*, 447 N.W.2d 715, 716 (Mich. 1989); *see* MICH. COMP. LAWS ANN. § 552.17a (2002).

⁷⁵ *Smith*, 447 N.W.2d at 738.

⁷⁶ *Jones v. Jones*, 51 Misc. 2d 610, 615 (N.Y. Fam. Ct. 1966).

⁷⁷ Buhai, *supra* note 1, at 723.

⁷⁸ 539 N.Y.S.2d 271, 271 (Sup. Ct. 1989).

⁷⁹ 15 R.I. GEN. LAWS ANN. § 15-5-16.2 (2011).

tain gainful employment on a full-time basis due to the care necessitated by the child.⁸⁰

In these states, courts cannot award additional maintenance to the custodial parent in exchange for the lack of continuing child support. It is commonly known in most states that maintenance cannot be a substitute for child support, in cases of post-majority support or for minor children. “Adult child support cannot be indirectly awarded under the guise of spousal support, and likewise, spousal support cannot be indirectly awarded under the guise of adult child support.”⁸¹

V. Calculating Post-Majority Child Support

While the common view of post-majority child support for disabled children was made clear by the *Brewington* court, the opinion failed to discuss “methods for determining what constitutes ‘disability’ qualifying for post-majority support and for calculating support for disabled adult children.”⁸² In an attempt to remedy this, the Supreme Court of Alabama reviewed cases such as *Presley v. Presley*, which held that a duty to support a disabled child “arises when the child has insufficient resources and, because of mental or physical infirmity, insufficient income capacity to enable him to meet his reasonable living expenses,”⁸³ and *State ex rel. Albert v. Sauer*, which held that to show a disabled child is insolvent, there should be “some evidence of [the] child’s earnings, living expenses, and ability to meet obligations; [the] same facts that establish child’s inability to support himself can establish child’s inability to meet obligations.”⁸⁴ The Supreme Court of Alabama endorsed “the reasoning of those courts that have established a two-part test for determining whether a disabled adult child is entitled to support.”⁸⁵ Specifically, the court combined “both economic and causation requirements”—hold-

⁸⁰ *Id.*

⁸¹ *In re Marriage of Drake*, 194 Cal. Rptr. 3d 252, 241 Cal. App. 4th 934 (Cal. Ct. App. 2015).

⁸² *Ex parte Cohen*, 763 So. 2d 253, 255 (Ala. 1999); Reeves, *supra* note 13, at 112.

⁸³ *Presley v. Presley*, 500 A.2d 322, 328 (Md. Ct. Spec. App. 1985).

⁸⁴ *State ex rel. Albert v. Sauer*, 869 S.W.2d 853 (Mo. Ct. App. 1994); *See also* MO. REV. STAT. § 452.340.4.

⁸⁵ *Cohen*, 763 So. 2d at 255.

ing that for support to be awarded, the trial court needs to determine, first, that “the adult child is not capable of earning an income sufficient to provide for his or her reasonable living expenses,” and second, that his or her “mental or physical disability is the cause of his or her inability to earn that income.”⁸⁶

VI. Implications of Post-Majority Child Support on Government Benefits Eligibility

Adults with disabilities are usually eligible for government benefits, such as Social Security Income and Medicaid/Medicare, due to their limited abilities to obtain employment and subsequent health insurance. However, post-majority child support “often creates a conflict with the Supplemental Security Income (SSI) program . . . as SSI can be lost or reduced if the adult disabled child receives ‘too much’ child support income.”⁸⁷ Some states have indicated how they deal with this issue in association with post-majority child support. A Nevada statute covering post-majority child support specifically states that receipt of such support “does not impair or otherwise affect the eligibility of a person with a handicap to receive benefits from a source other than his or her parents.”⁸⁸ In Arkansas, the Medicaid benefits and Social Security payments were not enough to cover expenses incurred by a mother who was the custodian of her adult autistic son, including: transportation costs, housing, utilities, and repairs.⁸⁹ Therefore, the court ordered the father to continue support where the government benefits fell short.⁹⁰ In Missouri, despite a disabled adult child’s receipt of \$860 a month from government benefit programs, the court deemed him insolvent because all of the money from Medicaid and Social Security was turned over to his care facility residence and he needed additional funds to cover personal needs.⁹¹ A South Carolina court refused to accept a father’s argument that the award of child sup-

⁸⁶ Reeves, *supra* note 13, at 113–14.

⁸⁷ Richard D. Chatwin, Esq., *Adult Disabled Children, Mandatory Child Support and Ssi Benefits: What Every Divorce Attorney Should Know*, 24 NEV. LAW. 12 (Dec. 2016).

⁸⁸ NEV. REV. STAT. ANN. § 125B.110 (1991).

⁸⁹ *Guthrie*, 455 S.W.3d 839.

⁹⁰ *Id.*

⁹¹ MO. REV. STAT. § 452.340.4; *Lueckenotte*, 34 S.W.3d 387.

port to his adult disabled child would cause Social Security or Medicaid to be lost.⁹² There was no evidence presented that child support would make the adult ineligible and the court determined that the father was only speculating on the impact of government eligibility.⁹³ Social Security and Medicaid will not completely deplete an award for child support but can reduce the amount awarded based on necessity since courts “[have] discretion to reduce the amount based on the child’s independent income or assets.”⁹⁴

VII. Conclusion

Parents expect that as they and their children get older, their children will become independent and will eventually be able to take the caregiver role over from the parents. However, disability affects many children and families in ways that cause the parents to be obligated to care for their children past the age of majority. Because of this, many jurisdictions have allowed some form of post-majority support for disabled children.⁹⁵ However, there is still a significant split within many states allowing post-majority support concerning the allowance of child support connected with the onset of a child’s disability.⁹⁶ Nine states recognize no duty to support disabled post-majority children. Given that most states allow support, it seems there is a strong desire to alleviate pressure upon the states to take care of the disabled when family members have the financial capacity to do so. While this moral and financial duty is not always enforceable, the trend is moving in the direction of allowing post-majority support for disabled adults. However, this duty “cannot and should not substitute for institutions, governmental or otherwise, that provide support for persons with disabilities even-handedly, without regard to the wealth or status of their parents.”⁹⁷

Erica Fumagalli

⁹² Riggs v. Riggs, 578 S.E.2d 3 (S.C. 2003).

⁹³ *Id.*

⁹⁴ Drake, 194 Cal. Rptr. 3d 252.

⁹⁵ Reeves, *supra* note 77, at 121–22.

⁹⁶ *Id.*

⁹⁷ Buhai, *supra* note 1, at 768.

448 *Journal of the American Academy of Matrimonial Lawyers*

State	Majority Majority*(no requirement for disability to present itself before majority age) or Minority
Alabama	Majority
Alaska	Majority
Arizona	Majority
Arkansas	Majority
California	Majority*
Colorado	Majority
Connecticut	Majority
Delaware	Majority*
District of Columbia	Majority*
Florida	Majority
Georgia	Minority
Hawaii	Majority*
Idaho	Majority*
Illinois	Majority*
Indiana	Majority
Iowa	Majority*
Kansas	Minority
Kentucky	Majority
Louisiana	Majority*
Maine	Minority
Maryland	Majority*
Massachusetts	Majority
Michigan	Minority
Minnesota	Majority*
Mississippi	Majority*
Missouri	Majority*
Montana	Majority*
Nebraska	Minority
Nevada	Majority
New Hampshire	Majority*

New Jersey	Majority
New Mexico	Majority
New York	Minority
North Carolina	Majority
North Dakota	Minority
Ohio	Majority
Oklahoma	Majority
Oregon	Majority*
Pennsylvania	Majority
Rhode Island	Minority
South Carolina	Majority*
South Dakota	Majority*
Tennessee	Majority*
Texas	Majority
Utah	Majority*
Vermont	Majority
Virginia	Majority
Washington	Majority
West Virginia	Majority
Wisconsin	Minority
Wyoming	Majority

