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Living Allowances for Adult Children With Developmental Disabilities

New York Governor Kathy Hochul recently signed into law legislation that amends both the Domestic Relation Law and the Family Court Act by making the parents of adult children with “certain” developmental disabilities chargeable for the support of those children until the age of 26.

By **Alton L. Abramowitz** | November 12, 2021

One of the most confounding dilemmas to face parents are the ongoing and oftentimes boundless struggles, obligations, and duties to provide for adult children with special needs, regardless of

whether those obligations and duties are self-imposed, involuntary, moral, ethical, financial, caretaking and otherwise "supportive" in every sense of that word. "Going through a divorce can be one of the most difficult times in a person's life. This difficulty is often greatly increased when the parties have children together. Further challenges arise where one or more of the parties' children have special needs." *Navigating the Divorce Process When You Have a Child With Special Needs*, The American Academy of Matrimonial Lawyers (2015). While there are a myriad of complex issues that divorce lawyers face on a daily basis in their law practices, few provide the kind of heart wrenching decisions facing their clients than recognizing and dealing with the conundrums of providing for the care and support of developmentally disabled children as those children approach and enter adulthood, if they are not adults already from a chronological perspective at the time of the divorce.

New York Governor Kathy Hochul recently signed into law legislation that had been sitting on the desk of her predecessor at the time that Governor Hochul assumed office, which amends both the Domestic Relation Law (DRL) and the Family Court Act (FCA) by making the parents of adult children with "certain" developmental disabilities chargeable for the support of those children until the age of 26. See DRL §240-d and FCA §413-b. The legislative memorandum providing the "justification" for this change in our law, reads as follows:

The "age of majority" is the legal age established by state law which defines that an individual is no longer a minor, and as a young adult, is granted the right and responsibility to make certain legal choices that adults make. In some states, you are considered an adult at the age of 18 or upon high school graduation, in others it is extended until the age of 21.

According to the National Conference of State Legislatures, an exception to the rule that parents' duty to support their children ends at the children's majority occurs when the child has mental or physical disabilities and cannot support his/herself. Oftentimes courts define "disability" in economic terms, meaning the inability of the disabled adult to adequately care for themselves through their own means.

Currently 40 states have provisions allowing custodial parents to pursue child support after the age of 21 for their adult children with disabilities. Our neighboring states New Jersey, Massachusetts and Rhode Island all passed such legislation. States differ as to whether support for a disabled adult is determined by the state's child support guidelines or by the needs of the adult as balanced by the parents['] ability to provide support.

Families with dependent, adult-children with developmental disabilities, face numerous challenges in providing necessary support for their loved ones. These challenges can at times become overwhelming, especially when they are being faced by a single parent trying to provide the best life they can for their child. It is the responsibility of both parents to assist in the expenses that occur while assisting an adult with developmental disabilities, and we must help-ensure these families achieve the lives they have always wanted for themselves and their child. This legislation aims to provide families with the assistance they need in order to offer the life their loved ones deserve.

(Note should be made that the amendments to both the DRL and FCA contain identical language. Accordingly, for ease of reference, this column will follow DRL §240-d.)

DRL §240-d contains five relatively brief, but very instructive, paragraphs. Paragraph 1 essentially provides that a parent, who is “chargeable” with the support of a minor child, is also liable to pay support to the other parent with whom the child resides until the age of 26 if that child is “developmentally disabled” within the meaning of subdivision 22 of Mental Hygiene Law (MHL) §1.03 and if that child is “principally dependent” on the residential parent for “maintenance”. It also requires that a finding of a court that a child is developmentally disabled must be supported by a diagnostic report of a practicing “physician, licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker who is supervised by a physician, psychologist or licensed clinical social worker …”

MHL §1.03, subd. 22 defines a “developmental disability” as a disability which:

(a)(1) is attributable to intellectual disability, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia, Prader-Willi syndrome or autism;

(2) is attributable to any other condition of a person found closely related to intellectual disability because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of intellectually disabled persons or requires treatment and services similar to those required for such person; or

(3) is attributable to dyslexia resulting from a disability described in subparagraph one or two of this paragraph;

(b) originates before such person attains age twenty-two;

(c) has continued or can be expected to continue indefinitely; and

(d) constitutes a substantial handicap to such person’s ability to function normally in society.

Paragraph 2 of DRL §240-d allows the parent with whom the adult child resides to file a petition for the support of that child and requires the court to apply the child support provisions of DRL §240 (1-b) for calculating a child support award. It also adds as a factor for the court to consider “whether the financial responsibility of caring for the [developmentally disabled adult child] has been “unreasonably placed on one parent” but limits the time period for that factor to the period between the child’s 18th or 21st and 26th birthdays, depending upon the age at which child support terminated.

Paragraph 3 provides the court with jurisdiction to hear and determine proceedings brought by order to show cause and petition under this section of the law and gives the court the power to enforce and modify resulting orders.

Paragraph 4 gives the court discretion to order that the payments be made to the parent with whom the adult child resides or to a trust as specified in that paragraph.

And, paragraph 5, specifies that this law applies to “all order of support for adults with developmental disabilities.”

This new statute presents the matrimonial law practitioner with several potentially thorny issues to confront, such as whether requiring a parent to support a developmentally disabled child beyond the age of 21 discriminates against children of similar age who are not afflicted with that kind of disability and does it deny them equal protection of the law by not requiring their parents to support them until age 26 as well; whether it discriminates against developmentally disabled children who are in a class of such children over the age of 26; whether it creates two classes of parents also on a discriminatory basis; determining if to seek public assistance for a developmentally disabled adult child under the age of 26 where one or both of the parents are possessed of sufficient financial capability to independently support that child; deciding what proof ought to be presented to a court where a parent of such an adult child is him/herself approaching or at the point of retirement in order to balance the future financial needs of that parent against the current and/or future financial needs of that child; etc.

One thing is fairly safe to predict: This new law is going to engender a fair amount of litigation for the foreseeable future regardless of which side a parent may be on the many potential issues that will soon start percolating throughout the New York courts.

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