

*“If we have co-parenting, as my boy is with me for two weeks in a month, do I still have to pay maintenance?”*

Shando Theron, specialist matrimonial lawyer at Theron Inc, responds that many misconceptions about maintenance costs exist since there is no specific calculation embedded in The Maintenance Act (99 of 1998) which relies on principles such as, “reasonable expenses”, “affordability” and “apportionment”.

However, there is a basic means of calculating reasonable expenses that is generally accepted by most courts and which are determined from bank statements which indicate the cost of the child on a monthly basis. The reasonable expenses are categorised into three main types: consumables, academic, and medical costs.

Consumables include items such as water, lights and electricity, a portion of the bond or rent, casual clothing and the costs of hiring a nanny. The non-custodial parent is to pay a cash contribution to the custodial parent.

Academic costs include school fees, stationery (up to and including the provision of electronic devices required by the school), school uniform, (two full summer and two full winter uniforms plus a school tracksuit) extra-murals and their associated equipment, school lunches, transportation to and from school and school tours. Academic costs generally make up the lion’s share of maintenance costs.

Finally, there are the medical expenses which include payment of medical aid, general medical expenses, and out-of-pocket expenses when medical aid funds run out.

Apportionment is the most difficult step of the process and it is where the above three types of costs are apportioned or divided between the parents depending on affordability. It is usually apportionment which is the cause of a maintenance court application. Broadly speaking, apportionment is based on the “income differential” or difference between the earnings of the two parents. Should the parents earn roughly the same, the above costs would be apportioned equally, 50/50. If one parent earns twice what the other does, the costs would be apportioned 67/33 and so on.

When parents have shared residency with the child, and share equal time in a month with their child, the consumables portion generally falls away since the child should use the same amount of consumables at each home and each is considered then to cancel out the other. As far as academic and medical costs (often called “eds and meds”), the father remains responsible for his portion regardless. Hence, in answer to the father’s question, he still has to pay ‘eds and meds’ but may not have to pay consumables.

As a result of the Covid-19 pandemic, many parents have lost their employment. At its heart, maintenance is a means test, and is stated as such in Section 15 of the Maintenance Act. Should a parent become unemployed and have no other income or assets, they would be able to demonstrate that their current means are zero. That would then affect how the maintenance costs are apportioned until such time as they secure employment, in which case maintenance will be re-adjusted again.

Shando Theron

August the 08<sup>th</sup> 2020