WEST VIRGINIA CODE: §48-1-205

§48-1-205. Attributed income defined.

(a) "Attributed income" means income not actually earned by a parent, but which may be attributed to the parent because he or she is unemployed, is not working full time, or is working below full earning capacity, or has nonperforming or underperforming assets. Income may be attributed to a parent if the court evaluates the specific circumstances of the parent to the extent known, including such factors as the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, physical and mental health, criminal record, and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors in the case. Income may also be attributed to a parent if the court finds that the obligor has nonperforming or underperforming assets.

(b) If an obligor: (1) Voluntarily leaves employment or voluntarily alters his or her pattern of employment so as to be unemployed, underemployed, or employed below full earning capacity; (2) is able to work and is available for full-time work for which he or she is fitted by prior training or experience; and (3) is not seeking employment in the manner that a reasonably prudent person in his or her circumstances would do, then an alternative method for the court to determine gross income is to attribute to the person an earning capacity based on his or her previous income. If the obligor's work history, qualifications, education, or physical or mental condition cannot be determined, or if there is an inadequate record of the obligor's previous income, the court may, as a minimum, base attributed income on full-time employment (at 40 hours per week) at the federal minimum wage in effect at the time the support obligation is established. In order for the court to consider attribution of income, it is not necessary for the court to find that the obligor's termination or alteration of employment was for the purpose of evading a support obligation.

(c) Income shall not be attributed to an obligor who is unemployed, underemployed, or is otherwise working below full earning capacity if any of the following conditions exist:

(1) The parent is providing care required by the children to whom both of the parties owe a legal responsibility for support and the children are of preschool age, or are handicapped, or otherwise in a situation requiring particular care by the parent;

(2) The parent is pursuing a plan of economic self-improvement which will result, within a reasonable time, in an economic benefit to the children to whom the support obligation is owed, including, but not limited to, self-employment or education: *Provided*, That if the parent is involved in an educational program, the court shall ascertain that the person is making substantial progress toward completion of the program;

(3) The parent is, for valid medical reasons, earning an income in an amount less than

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previously earned; or

(4) The court makes a written finding that other circumstances exist which would make the attribution of income inequitable: *Provided*, That in the case the court may decrease the amount of attributed income to an extent required to remove inequity.

(d) The court may attribute income to a parent's nonperforming or underperforming assets, other than the parent's primary residence. Assets may be considered to be nonperforming or underperforming to the extent that they do not produce income at a rate equivalent to the current six-month certificate of deposit rate or any other rate that the court determines is reasonable.

(e) Income shall not be attributed to an obligor who is incarcerated. Incarceration shall not be treated as voluntary unemployment in establishing or modifying a support obligation.

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