

Child Care Variance Rules

By Alft & Wilson Publishing

Underlined language added as emphasis.

Rule 9.4 Guidelines — rebuttable presumption. In ordering child support, the court should determine the amount of support specified by the guidelines. There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. That amount may be adjusted upward or downward, however, if the court finds such adjustment necessary to provide for the needs of the children or to do justice between the parties under the special circumstances of the case. In determining the necessity of an adjustment, the custodial parent’s child care expenses under rule 9.11A are to be considered. The appropriate amount of child support is zero if the noncustodial parent’s only income is from Supplemental Security Income (SSI) paid pursuant to 42 U.S.C. 1381a

The underlined language was added effective January 1, 2022. This rule directs that the court must consider the child care expenses in determining if an adjustment to support is to be made.

Rule 9.5(2) Net Monthly Income means gross monthly income less deductions for ...

j. Actual child care expenses, as defined in rule 9.11A. However, this deduction is not allowed when a variance is granted under rule 9.11A.

This rule does not address how to handle the tax credits/reimbursements the custodial parent might receive when filing tax returns and claiming child care expenses. These credits may have a significant effect on the variance amount. Support Master provides the calculations for you.

Rule 9.11A Variance for child care expenses. Because the cost of child care is not included in the economic data used to establish the support amounts in the Schedule of Basic Support Obligations, the custodial parent’s child care expenses (*pre-amendment, the word “may” here*) constitute grounds for requesting an upward variance from the amount of child support that would result from application of the guidelines. If a party requests a variance under this rule, the court must first determine the amount of the custodial parent’s child care expenses and then determine the amount of the variance, if any. A variance for child care expenses **should be liberally granted** and must be supported by written findings in accordance with rule 9.11.

9.11A(3) In determining the amount of the variance, the court **may** consider each parent’s proportional share of income. The amount of the child care expense variance allowed **should not** exceed the noncustodial parent’s proportional share of income. **The support order must specify the amount of the basic support obligation calculated before the child care expense variance, the amount of the child care expense variance allowed, and the combined amount of the basic support obligation and the child care expense variance, and when the child care expense variance will end.** Absent compelling circumstances, the child care expense variance should not extend beyond the time when there are no longer any children under the age of 13 who are subject to the support order. When a child care

expense variance ends pursuant to the terms of the support order, support will automatically adjust to the amount of the basic support obligation without a child care expense variance.

Click the “Guidelines” button in Support Master to find our “Variance Guide”. This step-by-step form will help your client provide the information you will need when seeking a variance.

9.11A(4) When considering a variance, child care expenses are to be considered independent of any amount computed by use of the guidelines or any other grounds for variance. Ch 9, p.7

9.11A(5) When a variance is ordered pursuant to rule 9.11A, no deduction for child care expenses under rule 9.5(2)(j) will be allowed in calculating either party’s net monthly income to determine the amount of the basic support obligation.

Look at our “Variance Feature How To” document found under the “Guidelines” button of Support Master. This will provide you with detailed instruction on using and understanding the calculations. You need to know how you arrived at your numbers.

You must enter all information into Support Master BEFORE you enter the cost of child care. Once entered, go to “Other Deductions” enter the cost of child care. In the same screen, click “Calculate Child Care Variance”.

9.11A(6) A change in the amount of child care expenses incurred by the custodial parent is a factor to be considered in determining whether a substantial change in circumstances exists to modify a support order that includes a variance under rule 9.11A.

9.11A(7) Rule 9.11A does not apply to:

a. Court-ordered joint (equally shared) physical care arrangements, as those child care expenses are to be allocated under rule 9.14(3).

b. Cases where the noncustodial parent’s adjusted net monthly income is in the low-income Area A of the schedule in rule 9.26.

When you use our “Calculate Variance” feature, and you enter an amount of variance you are requesting, once you click “Accept and Return”, you will notice that the child care expense you entered earlier is not longer present. Remember, you are not allowed to claim the expense as a deduction if you are seeking a variance.

You need to understand how it works, click on the “Variance Feature How To” file under the “Guidelines” button in Support Master.

Open Form 1 and scroll to the third page. You will now see this which shows the support amount. The variance request we entered (\$200.00) and the adjusted support amount.

III. b. Child Care Expense Variance under rule 9.11A

P. NCP’s guideline amount of child support	\$1,696.82
Q. Amount of variance for child care expenses	\$200.00
R. Adjusted amount of child support	\$1,896.82