



Money - Part 2: Spousal Maintenance

Spousal maintenance orders are made between married or previously married couples. In Queensland, there is no obligation to maintain a de facto partner. Spouses need not be divorced or even separated for the law pertaining to spousal maintenance to apply though an application for spousal maintenance must be made within 12 months of a divorce becoming final.

When Can You Get Maintenance

Each spouse has a right to maintenance from the other under the *Family Law Act*, provided they meet the threshold requirements. There are three important questions to be asked when establishing an entitlement to maintenance:

1. What are the applicant's reasonable living expenses?
2. Is the applicant unable to support himself or herself adequately?
3. Is the respondent reasonably able to maintain the applicant?

When considering if a person can support themselves adequately, the court will look at issues such as whether a person has care of a child of the marriage and whether the person has any physical or mental incapacity which prohibits or restricts their employability. Where it is reasonable to do so with regard to the considerations above, a spouse will generally have to engage in some form of remunerative employment.

Pension Eligibility Not Taken Into Account

The ability of someone to support themselves does not include their eligibility for an income tested pension nor any financial support they receive from family and friends. This is because it is considered that it is not the responsibility of social welfare or the community to support a person who could reasonably be supported by their spouse.

Generally a person will prove they are unable to support themselves if their living expenses outweigh their income. The needs of a person are **not** determined with reference to a subsistence level of living or the "poverty line" but with reference to a reasonable standard of living in each individual's circumstances. This is usually determined by comparing the standard of living a spouse had before and after separation. For example, a wife, X who stalled her career to care for the children of a marriage may have significantly decreased her earning capacity due to lack of experience and training. While X may be able to undertake low paying work which would not result in the family being impoverished; this standard of living would not be comparable to that enjoyed by the family during the marriage. Having said this, the court will be pragmatic in that there is tolerance of the inevitable disparity in living standards between parties before and after separation. The respondent is not required to maintain the applicant to the same standard as enjoyed during the marriage.

Capacity to Pay

It is important to remember that although a spouse may prove that they are unable to support themselves, unless the other spouse has the income to provide the support they need, no maintenance award will be made. Thus the financial and other commitments and earning capacity of the respondent spouse will also be considered. Spousal maintenance orders are usually concerned with the future needs of the parties. They may be in the form of a lump sum or as periodic payments, or a combination of both. Sometimes they may be very specific such as one spouse paying for the other to undertake a particular training course so as to increase their earning capacity. They may also involve the allocation of a marital asset to one party in place of cash funds.

Property Settlement

The court will also look at the quantum of any property settlement that has been made. That is, if a property order was designed to provide for the future support of a spouse, then the court will generally not award additional spousal maintenance unless it is required. The court is also reluctant to award periodic maintenance for an uncertain or ongoing period of time. This is because it is considered important for people to have finality in their separation enabling them to move on with the rest of their lives.

Review

Unlike property orders, spousal maintenance orders can be reviewed at any time if there is a change of circumstance. Thus spousal maintenance should not be viewed as increasing the length of time parties are financially linked but as providing support that will enable the parties to move on with their lives more fairly and effectively.

For more information

See the Family Court Website at

<http://www.familylawcourts.gov.au/wps/wcm/connect/FLC/Home/Property+and+Money+Matters/Maintenance/>

WARNING

These articles reflected the state of the law at the time of publication. But the law is a living creation which is constantly changing and adapting. These articles should be treated as an information resource only and not as a substitute for specific legal advice in respect to your particular problems and circumstances.