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The goal of our monthly QDRO Newsletter is to keep you informed of Hot Topics regarding all aspects of QDROs. If you find our newsletter valuable, please forward it to a colleague. We hope you enjoy this month's topic.

"DOUBLE DIPPING" RETIREMENT ACCOUNTS IN DIVORCE - SIMPLIFIED

The term “double dipping” as it relates to pensions in divorce addresses the question: Are a person’s pension benefits both property subject to division and income to be considered in determining spousal support? In “double dipping” courts count the same income stream twice. This principle has most often been applied to pensions and similar types of assets, and the practice raises questions about its inherent unfairness.

“Double Dipping” happens because in many jurisdictions the courts are not required to pick one way of handling the pension. They can treat it as both future income, which can be used to determine support and an asset, which can be considered for property division.

In this situation the pension is “double dipped” or “double counted.” Supporters of this concept maintain that alimony and equitable distribution are two distinct concepts. They argue that income produced by marital assets should not be ignored when gauging the financial position of divorced spouses for purposes of awarding alimony. One lawyer likens the argument to a question of having either “milk or meat” from a cow but not both. Opponents argue that “double dipping” allows the alimony or support recipient to take two shares of the same entity, thereby making an unfair allocation between the parties.

In divorce actions where the financial situations of the parties are profoundly different, an absolute prohibition against “double dipping” can create inequities between the parties. As a result, courts, while generally opposing the concept of “double dipping,” have created exceptions and modifications to permit its application.

Most courts have not opted to flatly prohibit the dual consideration of marital property as an asset and as a source of income. However in many jurisdictions, the courts have recognized the inequity created by “double dipping” and hold that when a pension is considered marital property subject to distribution, the same pension benefits cannot be counted again as income for purposes of alimony.

However, “double dipping” can happen in certain circumstances without being overtly noticeable. For example: a plan participant receives his/her entire pension and the ex-spouse takes another offsetting asset in lieu of an interest in the pension at the time of the divorce. At the time of the divorce, the pension was considered an asset subject to division between the parties. A division was accomplished by awarding the non-participant spouse an offsetting asset. Years later the participant retires and begins receiving benefits from the pension plan. Motions are made to adjust the plan participant’s income regarding calculations for spousal support. In this scenario, the pension is being “double dipped.”

However, the courts have viewed the idea of “double dipping” as it relates to child support in a different manner. Most courts hold that just because an asset is property "... does not mean that it cannot be considered as income..." In child support, “double dipping” cannot be argued as an unfair practice since "the child never received any property in the equitable distribution award." In determining child support, the parties’ assets and income are examined by the court regardless of how the income or assets are acquired by each party. Moreover, in cases of calculation of child support courts have held that income includes veterans’ benefits, insurance benefits, workers’ compensation, pensions, annuities, capital gains, lottery and gambling winnings, prizes and awards, "all of which are property interests that may be equitably divided between the spouses."

“Double dipping” is an equitable distribution/support concept that has gained some acceptance. Equitable distribution is a property right based

on the fair market value of assets; spousal support is a need based concept based on income. Most jurisdictions have provided courts with freedom to analyze the fairness of this concept as it relates to individual cases and divorcing parties.

--Conclusion--

If you have any questions regarding our Newsletter or [QdroDesk.com](http://www.QdroDesk.com), please let me know and thank you for giving us the opportunity to share our Newsletter with you. We appreciate your business, and the confidence you have placed in us.

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Sincerely,

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