



## February Hot Tip

**Q:** My fact situation is a former spouse who was granted modifiable spousal maintenance for a term of years who now claims that she is unable to support herself due to a mental health disability. She has not complied with treatment recommendations of her doctors which might have rendered her capable of support. Can a disabled spouse just sit there and collect spousal maintenance forever without taking any steps to remedy the disability? She is claiming she could not obtain appropriate treatment because her income was too low to afford to pay for the treatment and she did not like the free treatment available. Any suggestions would be greatly appreciated.

**A:** I do not know which jurisdiction you are in, but in Illinois we have a statute that specifically provides that the efforts of a party to become self-supporting should be considered in actions to modify maintenance. See 750 Illinois Compiled Statutes (ILCS) 5/510(a-5) (2003):

"An order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court shall consider the applicable factors set forth in subsection (a) of Section 504 and the following factors: . . . (2) the efforts, if any, made by the party receiving maintenance to become self supporting, and the reasonableness of the efforts where they are appropriate."

There is case law along the same lines. It sounds like you could use an expert to evaluate the wife and testify about the efficacy of treatment and the wife's ability to be self-supporting, particularly with proper treatment.

Since the wife seems to have put her mental condition at issue and seeks to benefit from it, you also may have access to some of her treatment records and testimony of her doctor (depending on state law).

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**Q:** If a divorce decree awards husband certain items and says he has to remove them from wife's property by a certain date, what happens if he doesn't? Is she allowed to sell the stuff? Maybe shoot it? (This is in Texas)

**A:** A "drop dead clause" in the stipulation or decree is helpful, i.e. if he doesn't remove his stuff by a certain date then it is deemed abandoned by him and she may dispose of the property in any manner she sees fit.

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