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# Appeals Court: Alimony Appropriate Following Six-Year Marriage When Spouse is Disabled

By Nicole K. Levy | January 15, 2018

Family Law Alimony Divorce

*Divorce Lawyer Nicole K. Levy reviews a recent Appeals Court decision affirming alimony for a disabled wife following a six-year marriage.*



The Massachusetts Appeals Court recently ruled that it is appropriate for a Probate and Family Court judge to order alimony that exceeds the “cap” in the Alimony Reform Act (ARA) when the sole source of income for a disabled spouse would be SSDI payments. In a December 2017 decision, *Morse v. Morse (2017)*, the Appeals Court reviewed a husband’s appeal of an alimony order that paid a former wife more alimony than is ordinarily available under the [Massachusetts alimony formula](#). The Appeals Court affirmed the decision, despite the husband’s argument that the alimony was being used to pay for the wife’s children from a former marriage.

## Husband Raises Three Issues in Appeal of Alimony Order

In *Morse*, the husband filed his appeal following a trial in the Bristol Probate & Family before [Hon. Richard J. McMahon](#). The husband argued that the award of alimony was inappropriate because the judgment (1) factored in the needs of the wife’s children from a previous marriage in analyzing her need for alimony; (2) required the husband to provide health insurance for the wife although she already was insured through Medicare; and (3) invited the wife to file a complaint for modification to extend alimony payments at the end of the [durational limit](#) set forth in the judgment. The Appeals Court disagreed with husband’s arguments and affirmed the alimony award to the wife.

In Morse, the parties were married for just over six years and enjoyed an upper middle-class lifestyle during the marriage. The trial court found that the wife's financial statement that was submitted at trial demonstrated accurately her weekly expenses that were necessary to provide her with a reasonable standard of living. The trial judge noted that her sole source of income was her monthly Social Security Disability Income (SSDI) benefit, and this alone was insufficient to meet either the wife's financial needs as indicated on her financial statement or the [lifestyle enjoyed by the parties during the marriage](#).

When reviewing the wife's income and expenses, the trial judge noted that the wife faced a weekly deficit, and that the wife's SSDI income alone was not able to meet her economic needs. The trial judge also found that the husband had an ability to pay alimony. The judge calculated alimony based on the amount the Wife would need to cover her weekly expenses, resulting in an alimony order that exceeded the Alimony Reform Act's "cap", which ordinarily limits alimony to 35% of the difference between the parties' respective gross incomes.

## **Disabled Wife's Expenses Included Caring for Children From Previous Marriage**

On appeal, the husband argued first that by the trial court judge erred by including costs associated with the wife's children from a prior marriage among the wife's economic need for alimony. The Appeals Court disagreed, that the husband had failed to properly raise this concern at trial stage:

As for the husband's challenge to specific expenses for the minor children who were not born of the marriage, at trial, he did not challenge those expenses, which were listed on the wife's financial statement. As a result, this portion of his argument is waived.

The Appeals Court further noted that the trial judge used the wife's weekly expense deficit to calculate alimony, ensuring her needs were met. Moreover, the Court noted that the trial court judge could have awarded the wife up to 35% percent of the difference in the parties' gross income. This would have resulted in a weekly alimony award of more than double that the amount ordered.

In addition, the husband also argued that he should not have been obligated to provide health insurance for the wife, as she received benefits through Medicare in conjunction with her SSDI benefits. The Appeals Court disagreed, noting that the trial judge properly addressed the issue as follows:

[T]he judge properly addressed the issue of continued health care coverage for the wife. The judge specifically found that, according to the husband's

financial statement, his company provides, at no cost to him, private health insurance as a perquisite of his employment. The judge also determined that the husband's financial circumstances did not support a reduction in the alimony award based on the husband's obligation to continue providing health insurance to the wife.



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## Husband Challenges Court's Invitation for Wife to Seek Additional Alimony in Future Modification

Finally, the husband took issue with the trial court's suggestion that the wife should file a complaint for modification seeking a continuation of alimony if, at the end of the durational period, her disability continued. Under the ARA, the [duration of alimony is calculated](#) based on the length of the marriage. A party may seek an extension of alimony beyond the durational limits of the ARA by filing a [Complaint for Modification](#) seeking an [deviation from the durational limits](#).

In Morse, the parties had been married just over six years. Under the ARA, this limited the husband's alimony payments to just over 3.5 years. Judges may [deviate from the durational limits under the ARA](#), but must enter findings of fact explaining why the deviation is necessary at the time.

In the Morse judgment, the probate and family court judge indicated that he would look "favorably" upon a complaint for modification filed by the wife after the 3.5 years of alimony payments had been made. The Appeals Court did not take issue with the judge's instruction, instead finding:

Though the judge stated in his rationale that he would look "favorably" upon the wife's future modification complaint, he in no way relieved the wife of her burden to prove by clear and convincing evidence a material change in circumstances — that is, at the end of the durational period, to prove that her disability is continuing or permanent. .... In assessing a change in circumstances as the possible basis for an alimony modification, the judge will have to consider the same factors that were used in the initial award of alimony under G. L. c. 208, § 34, as well as the wife's need for support and the husband's ability to pay. In addition, because any future modification will

require court approval, the disputed order is not, as the husband argues, a prohibited self-modifying order. (Internal citations omitted.)

The husband argued that if the wife remained disabled at the end of the durational period, then there would be no change in circumstance that would warrant a modification. Unsurprisingly, the Appeals Court held that the question of whether a change in circumstances occurred would need to be decided at the time of a future modification.

The Appeals Court appeared to support the trial judge's view that an extension beyond the durational limit should be decided after the 3.5 years of alimony be paid, based on whether or not the wife's current array of medical conditions were still present at that time. Although the wife will still carry the burden of proof for demonstrating a material change in circumstances in a future [modification of alimony](#), the Appeals Court and trial court both appeared to agree that the continued presence of the wife's disability *may* satisfy that burden in a future modification.

## Appellate Legal Standard in Alimony Cases: Probate Court Judges Granted Broad Discretion

In reviewing an alimony award an appellate court conducts a two-step analysis, which includes examining the trial judge's findings to determine whether all relevant factors were considered, and next, the appellate court considers whether the rationale underlying the trial judge's conclusions flowed rationally from the findings and rulings. In general, the Appeals Court gives significant deference to the trial judge, who has considerable discretion in determining alimony awards.

**About the Author:** Nicole K. Levy is a Massachusetts divorce lawyer and family law attorney for Lynch & Owens, located in Hingham, Massachusetts.

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**About the Author:** [Nicole K. Levy](#) is a Massachusetts divorce lawyer and Massachusetts family law attorney for Lynch & Owens, located in located in [Hingham](#), Massachusetts and [East Sandwich](#), Massachusetts. She is also a mediator for [South Shore Divorce Mediation](#).

**Schedule a consultation with [Nicole K. Levy](#) today at (781) 253-2049 or send her an email.**

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