

The State of Oregon v. Vargas (3/24/99 - 70 Cal.App.4th 1123)

Ability to earn test must be applied to current circumstances. Incarcerated parent did not have opportunity to work.

Father (F) had three children in Oregon where mother (M) was receiving public aid. Oregon sought reimbursement from F. F was beginning a 4 year sentence in California prison institution. The prison did not provide any employment opportunities. Trial court concluded spousal and child support based on minimum wage for F and ordered \$75 per month per child.

Court of Appeal, 5th District, reversed because F did not have earning capacity. Earning capacity standard is met when F has both ability and opportunity to work. Also, earning capacity must be met by current circumstances. Court must find ability and opportunity to work before determining earning capacity to impute income to F. Court stressed this is not an “incarcerated exception” to child support obligations, and directed trial court to look to assets, income, or employment possibilities of F.