

Increasing Massachusetts Alimony Through a Complaint for Modification

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By Moriah J. King

A recent Appeals Court case suggests there may be more avenues for increasing alimony post-divorce than previously believed.

In Massachusetts, [alimony](#) is frequently paid to a former spouse after a divorce when there is a substantial discrepancy between each spouse's income and earnings at the time of the divorce. As we have covered in numerous other blogs, the amount and durational of alimony following a divorce are impacted by a variety of factors, including the [length of the marriage](#) and [premarital relationship](#), the disparity in income between the parties, [whether the parties have children](#) who are subject to a child support order, and factors such as the [health of one party](#). Similarly, parties can [modify an existing alimony order](#) for a wide range of

reasons, including the [termination of child support](#), the [cohabitation of an alimony recipient](#), the [post-divorce medical situation of a spouse](#), and [changes in one or both party's incomes](#).

Despite the wide range of options for modifying alimony, many Massachusetts alimony recipients have found it challenging to obtain *an increase* of alimony through a Complaint for Modification since 2017, when the landmark Supreme Judicial Court opinion was [released in Young v. Young](#). In her detailed [blog on the Young case](#), [Attorney Levy](#) explored how the decision placed limits on parties seeking to increase alimony after their divorce, arising out of the SJC's holding:

We conclude that, where the supporting spouse (here, the husband) has the ability to pay, the need for support of the recipient spouse (here, the wife) under general term alimony is the amount required to enable her to maintain the standard of living she had at the time of the separation leading to the divorce, **not the amount required to enable her to maintain the standard of living**



she would have had in the future if the couple had not divorced. We also conclude that, although there might be circumstances where it is reasonable and fair to award a percentage of the supporting spouse's income as general term alimony to the recipient spouse, those circumstances are not present in this case. (Emphasis added.)

In her blog, Attorney Levy explains the interplay between a recipient's "need" for alimony and the lifestyle the parties enjoyed before the separation. She quotes the SJC in Young, which appears to limit a spouse's "need" for alimony to the lifestyle they enjoyed before the separation.

Both the act and the case law interpret "need" in terms of the marital lifestyle the parties enjoyed during the marriage, as established by the judge at the time of the order being issued, in this case, the judgment of divorce. (Emphasis in original.)

Further, she cites the portion of the Young decision that suggests that an alimony recipient is not entitled to an increase in alimony just because the payor spouse's lifestyle exceeds the lifestyle the parties enjoyed during the marriage due to increases in the payor's wealth and income:

Even if the parties enjoyed an upwardly mobile lifestyle for the duration of their marriage, nothing in the language of the statute or our case law suggests that the recipient spouse is entitled, by way of alimony, to enjoy a lifestyle beyond what he or she experienced during the marriage.

"In short," Attorney Levy writes, "if a payor's lifestyle increases beyond the lifestyle he or she enjoyed during the marriage, Young makes clear that a recipient is not entitled to enjoy this extra wealth through increased alimony."

Does the Young Decision Prevent Alimony Recipients from Seeking an Increase in Alimony through a Complaint for Modification?

Although Young creates barriers against a recipient seeking an increase in alimony to achieve a more opulent or wealthy lifestyle than they enjoyed during the marriage, the case does not strictly prohibit recipients from seeking an increase in alimony, particularly if the increase is required to *maintain* the lifestyle and quality of life the recipient enjoyed during the marriage.

In Lascom v. Lascom (2024), a recent unpublished opinion of the Massachusetts Appeals Court, the Court affirmed a Massachusetts Probate and Family Court judge's decision to increase an alimony recipient's alimony after the recipient wife demonstrated that she required an additional \$400 per week in alimony to pay for medical insurance similar to the type she enjoyed during the marriage. In Lascom, the parties were divorced in 2018 pursuant to a Separation Agreement that provided the \$300 in weekly child support and \$600 in weekly alimony to the wife. Following a trial on cross-modifications, the Appeals Court described the lower court's findings as follows:

The judge determined that the wife had a weekly deficit of \$1,316.35 at the time of trial, as opposed to the weekly deficit of \$1,137.02 at the time of divorce. Although the difference of \$179.33 may not seem significant to some, the judge was well within her discretion in determining that this amount, on a weekly basis, constituted a material change of circumstances justifying modification. ... Moreover, the judge found that, since the divorce, the husband's weekly surplus, and thus his ability to pay alimony, had increased by \$460.45 per week (as a result of his increased income and decreased expenses). Accordingly, where the judge's findings, supported by the evidence at trial,

reflected that both the wife's need and the husband's ability to pay had increased since the time of the divorce, we discern no error in the judge's determination of a material change in the parties' overall financial circumstances warranting an upward modification of alimony.

As noted below, the Lascom opinion includes an interesting analysis that suggests that Young may not be as narrowly controlling as some believe in the context of increasing post-divorce alimony through a Complaint for Modification.

Lascom Case Suggests Pathways Around SJC's Young v. Young ruling

In Lascom, the husband argued that the wife's need for alimony should be limited to the lifestyle/need she reported on her financial statement at the time of the divorce, consistent with the Young decision's holding that a recipient's need for alimony is limited to the lifestyle enjoyed by the parties prior the separation. However, in Lascom, the Appeals Court held that Young's restrictions may not apply if the original alimony order at the time of the divorce *did not actually meet* the recipient's need at the time:

The husband's argument is premised on the assumption that the alimony amount at the time of divorce reflected the wife's actual need. In fact, the judge's factual findings reflect that the wife's actual need at the time of divorce was significantly greater than the amount that she accepted in the negotiated separation agreement. On modification, the judge was entitled to look at the parties' actual positions at the time of divorce, in addition to the terms of their agreement.

The Appeals Court's reasoning in Lanscom suggests that a party may be entitled to an increase in alimony following the divorce – despite Young's restrictions – if the recipient can demonstrate that the original alimony award entered at the time of judgment was insufficient to maintain the lifestyle the recipient had enjoyed prior to the parties' separation. Notably, this is not an uncommon fact pattern. Indeed, in *many* cases, recipients do not receive enough alimony to maintain the marital lifestyle.

Lascom Grants Former Wife Maximum Presumptive Order of 35% Alimony Years After Divorce was Finalized

Finally, it is worth noting that in Lanscom, the lower court calculated the increased alimony to the wife at the maximum statutory rate of 35% of the difference in the parties' gross incomes. This is notable because the Massachusetts Alimony Reform Act (ARA) sets presumptive maximum alimony at 30-35% of the difference in gross (pre-tax) income between the parties. The goal is to provide enough financial support for the recipient spouse to maintain a standard of living similar to the one experienced during the marriage without overburdening the payor spouse. To accomplish this, the difference in gross income between the parties is determined, and the specified percentage is then applied to that difference.

The use of 35% has been controversial since the [loss of federal \(followed by state\) tax deductibility in 2017](#) through the Tax Cuts and Jobs Act (TCJA), which took effect in 2019. However, because the parties were divorced before the loss of deductibility in 2018, alimony paid by the husband in Lascom probably remained tax deductible even after the modification. For parties divorced in 2019 or later, this remains a complicated issue.

Notwithstanding the issue of deductibility, it is noteworthy that the Court elected to award the former wife the statutory maximum for alimony upon modification, based on the rationale that the original alimony order did not allow her to maintain the standard of living she enjoyed during the marriage. This rationale may have application in other cases as follows:

- If the spouse received the statutory maximum for alimony in the original divorce, is a spouse entitled to an increase in alimony if the statutory maximum was insufficient to allow the recipient to maintain the marital lifestyle at the time of the divorce and the payor's income increases substantially after the divorce? For example, if the recipient identified a total need of \$5,000 per week at the time of the divorce, but the maximum alimony order at the time of the divorce only paid \$3500 per week, does the recipient have grounds to seek an increase in alimony in the future if the payor's increased income results in a statutory maximum order that comes closer to meeting the recipient's original need?
- In cases where a recipient simply agrees to accept alimony that is substantially less than *either* the statutory maximum *or* their need at the time of the divorce, does the recipient have the right to seek increased alimony through a modification if the payor's increased earnings allow for a higher order post-divorce?

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