LISA ANN MILLER,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 90-21,157
	:	
RICHARD MATTHEWS, JR.,	:	CIVIL ACTION - LAW
	:	
Defendant	:	EXCEPTIONS

OPINION AND ORDER

We are asked to consider the Exceptions filed by Plaintiff Lisa Ann Miller (hereinafter "Plaintiff") in the above captioned matter, filed June 10, 1999. Exceptions are taken to the Order of May 25, 1999.

Plaintiff first argues the Family Court Hearing Officer erred in not finding she was entitled to the nurturing parent doctrine. The Hearing Officer noted that at a prior Domestic Relations conference, the caseworker had given Plaintiff a nurturing parent status and did not assess her any earning capacity. May 25, 1999 Order p. 1.

In appropriate circumstances, earning capacity may not be imputed to a parent who chooses to stay home with a child under the nurturing parent doctrine. ***Frankenfield v. Feeser***, 672 A.2d 1347 (Pa.Super. 1996). The factors to be considered are the age and maturity of the child or children, availability of others who might assist the parent, adequacy of available financial resources to the parent who remains at home and the parent's desire to stay at home and nurture the child or children. ***Ibid***. The nurturing parent doctrine is not an absolute rule; it is but one factor under consideration in making a determination whether to impute an earning capacity to a parent. ***Depp v. Holland***, 636 A.2d 204 (Pa.Super. 1994).

Plaintiff's work history, as set forth in the Order, is that she was last employed at Eagle Janitorial for four to six months; prior to that, she worked at Hope Enterprises for four to six months. Plaintiff's children are ages eight and one-half, six and four years of age (the youngest being born of Plaintiff's present marriage). The Hearing Officer acknowledged the youngest child has been diagnosed with ADD and ADHD, is on Ritalin and receives Wrap-Around Services outside the home one day a week. The Hearing Officer noted that Plaintiff has extended family in the area.[1]

The Hearing Officer assessed Plaintiff an earning capacity of $500.00 a month. This is less than full-time minimum wage ($750.00). As indicated in the case law, the Hearing Officer was not required to excuse Plaintiff from sharing in the financial burden of support for the children. It was not unreasonable for the Master to take into account that the two older children are of school age and that child care is provided for the youngest one day a week. Considering that Plaintiff has family in the area who might assist in the child care and the respective financial situations of the parties, we cannot say it was error to assess Plaintiff an earning capacity. "[T]he support of children is the equal responsibility of both the father and the mother." ***Roberts v. Bockin***, 461 A.2d 630, 632 (Pa.Super. 1983).

Plaintiff next argues the Hearing Officer erroneously determined "there must be a deviation" based upon the finding that Defendant has an additional child in his present marriage. Defendant is remarried and stepfather to one child. At argument, Plaintiff's counsel

[1] Plaintiff argues that the services are provided in the home four days a week and the parent is to be present. At argument, counsel argued further that services are provided from 8:00 a.m. to 4:00 or 4:30 p.m. and the provider, Laurel Health Services, said a parent *should* be present. Therefore, whether a parent is required to be present is unclear. Moreover, this contention does not appear in the Order as prepared by the Hearing Officer and no transcript was requested by Plaintiff. We are constrained to consider that which appears in the record before the Court.

argued further that although Defendant may voluntarily choose to support this child, he has no legal obligation to do so and in any event it should not be at the expense of the two children born of his marriage to Plaintiff. Counsel conceded that if the child had been born of the marriage, the deviation would apply.

Plaintiff's counsel cites the case of ***Klein v. Sarubin***, 471 A.2d 881 (Pa.Super. 1984), wherein the Superior Court found a natural parent could not use the doctrine of in *loco parentis* status to relieve himself of a support obligation. Although it is laudable that Defendant contributes financially to his stepchild, we know of no authority that would allow Defendant to reduce his child support obligation to his two children by this expense. The matter must be remanded to the Hearing Officer to determine Defendant's proper child support payment amount without the inclusion of the child support obligation for Defendant's stepchild, as set forth in the Order.

Finally, Plaintiff argues the Hearing Officer should have ordered "extra needs reimbursement" for the parties' minor son for his Boy Scout registration and uniforms and for the minor daughter's similar Brownie extra expenses. Plaintiff has provided no authority for this position. Further, such expenses are not so extraordinary as to compel the Hearing Officer to consider them separate and apart from Defendant's child support obligation (such as is provided under Pa.R.C.P. 1910.16-6(d), 42 Pa.C.S., for example). This exception is denied.

O R D E R

AND NOW, this 9th day of September, 1999, Plaintiff's Exceptions regarding the nurturing parent doctrine and extra needs reimbursement are HEREBY DENIED. Plaintiff's Exception concerning assessment of Defendant's child support obligation without

consideration of Defendant's financial obligation to his stepchild is HEREBY GRANTED. The matter is remanded to the Hearing Officer for the appropriate recalculation consistent with this Opinion and Order.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator
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Domestic Relations
John A. Felix, Esquire
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Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)