

CAROL M. YOST,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Petitioner	:	DOMESTIC RELATIONS SECTION
	:	
vs.	:	NO. 98-20,298
	:	
RICHARD W. YOST,	:	
	:	
Respondent	:	EXCEPTIONS

**OPINION AND ORDER**

The matter presently before the Court concerns Exceptions filed by Richard Yost (hereinafter “Respondent”) April 22, 1999 and Counter Exceptions filed by Carol M. Yost (hereinafter “Petitioner”) April 23, 1999, to the March 29, 1999, Order of the Family Court Hearing Officer.<sup>1</sup>

Respondent’s first exception is that the Hearing Officer erred in giving Petitioner, who has an associate’s degree in accounting, an earning capacity of only \$750.00 a month, which would be equivalent to full-time work at a minimum wage job. Respondent argues that presumptive income must be applied selectively.

The Hearing Officer found that Petitioner, by working part-time and babysitting, presently earned less than the \$750.00 assigned her. Further, she earned her degree in 1983 and had not worked outside the home since 1986 (other than her part-time employment with the Jersey Shore School District). Moreover, the Hearing Officer indicated Petitioner was fired from the last position she held. Given the age of the degree, the fact that Petitioner has utilized

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<sup>1</sup> Having reviewed this Order and after confirming certain dates with the Domestic Relations office, the Court wishes to clarify the following dates which appear on (unnumbered) page 3: Petitioner requested the support Order be suspended September 2, 1998; the Order granting the Petition was entered September 14, 1998.

neither the degree nor any related skills since at least 1986 and that she was terminated from the position in which she would have employed those skills, the value of the degree in terms of enhancing Petitioner's earning capacity is highly questionable. Moreover, Petitioner would have to engage in substantial updating of her skills to be competitive for any position in the business field that would require or desire such a degree. Finally, this issue was considered previously through Exceptions filed May 15, 1998, by Respondent's prior counsel. This exception was denied by the Honorable Clinton W. Smith, President Judge, by Order of Court filed September 15, 1998. Respondent is precluded by the doctrine of *res judicata* from raising this issue once again. Given the facts, the Hearing Officer did not err in assessing Petitioner a minimum wage earning capacity.

Respondent next takes issue with the Hearing Officer's use of his 1998 W-2 to arrive at a net monthly income figure for Respondent. As the hearing was held March 29, 1999, Respondent argues the figure should have been based upon his year-to-date income, or his income for the last six months, amortized over a twelve-month period. However, we see no reason why the Hearing Officer committed error in using the W2 figures. Pa.R.C.P. No. 1910-16-2(a), 42 Pa.C.S., provides only that monthly gross income is ordinarily based upon *at least* a six-month average of all of a party's income. It does not require that the immediate six-month average be used. Here, the Hearing Officer chose to use financial information based upon a twelve-month period rather than only six months, information that is certain rather than approximated. Furthermore, the use of the annual figure provides fairer, more accurate

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Coincidentally, on that same day, September 14, 1998, Petitioner filed her request to reopen. Conference was held November 9, 1998 and the Interim Order was entered that date.

reflection of Respondent's income in terms of bonuses which are received during the year. We find no error.

The third exception is that the Hearing Officer erred in determining that Petitioner did not need to reestablish entitlement. We note the hearing and resulting Order concerned Petitioner's request to *reopen* the issue of child and support. Respondent has presented no authority, nor is this Court aware of any, that requires the *reestablishment* of entitlement after a period of suspension. Counsel for Respondent argues that the Hearing Officer erred in foreclosing his attempt to present evidence whether Petitioner was still entitled to spousal support. However, no transcript has been presented to this Court and we have no way of determining this issue. We can consider only what is in the record before us, namely, the statement by the Hearing Officer that "as this is a reopen of child and spousal support, there is no need to reestablish entitlement." March 29, 1999 Order at (unnumbered) p. 4. Nothing in the record before us shows any indication there is a question of entitlement.

Respondent indicated at argument that the fourth exception was withdrawn.

Petitioner's Counter Exceptions contend only that the Hearing Officer erred in mathematical calculations on (unnumbered) page 6 of the March 29<sup>th</sup> Order. In fact, the Hearing Officer did make a miscalculation in arriving at Respondent's child support under the new guidelines. The correct amount should be \$823.90, the sum of \$315.84 (Nicole), \$254.03 (Bryan) and \$254.03 (Hannah). Adding to that figure the Kindergym payment of \$46.87 and subtracting a \$9.76 credit for medical insurance, the resulting total child support/child care cost is \$861.01. Accordingly, the amounts the Hearing Officer should have used in the next paragraph to determine the monthly spousal support payment are: Total Income \$2,838.50;

deductions \$918.16 and \$861.01; Net \$1,059.33. Thirty percent of the net results in a monthly payment of \$317.80, as opposed to the amount of \$320.20 arrived at by the Hearing Officer.

Accordingly, the following Order is entered:

**ORDER**

**AND NOW**, this 16<sup>th</sup> day of September, 1999, Respondent's Exceptions to the Order of March 29, 1999, as approved by the Court April 15, 1999, are DENIED. Petitioner's Exceptions are GRANTED as set forth in the foregoing Opinion. The Order is amended to reflect the corrected support figures; the case is remanded to the Hearing Officer to recalculate the support amounts, including Respondent's monthly spousal support payment of \$317.80.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator  
Janice R. Yaw, Esquire  
William J. Miele, Esquire  
Judges  
Nancy M. Snyder, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)

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