

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

WES, : NO. 00-20,760  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
P J S, :  
Respondent :

OPINION AND ORDER

The exceptions filed in this case illustrate the difficulty presented to the Court by “an anticipatory request for modification” now commonly filed by much of the Family Bar. In this instance, Respondent previously worked as a Licensed Practical Nurse but went back to school and enrolled in the Physician’s Assistant Program. While in that program, her child support was based on a minimum wage earning capacity of \$750.00 per month.

Petitioner anticipating the graduation of Respondent filed a Petition for Modification six (6) weeks in advance of her graduation. On August 11, 2000, Respondent graduated as a Physician’s Assistant. On August 17, 2000, a hearing was held on the modification of support. At the time of the hearing, Respondent had not yet obtained a job as a Physician’s Assistant and now argues that her earning capacity should be based on the circumstance she was at the time of the hearing. Petitioner argues that as a result of Respondent’s graduation one (1) week earlier, her earning capacity should now be based on that of a Physician’s Assistant. The Family Court hearing officer rejected both arguments. He reasons since Respondent was out of school, the minimum wage earning capacity was no longer applicable and she did not have the earning capacity of a Physician’s Assistant because of the timeliness of the request. Therefore the hearing officer awarded her an earning capacity consistent with her prior employment as a Licensed Practical Nurse.

Respondent’s argument that she should be assessed a minimum wage earning capacity is clearly without merit. She certainly has the capacity to work as a Licensed Practical Nurse, if nothing

else. She could maintain such employment until such time as she is able to find employment in her chosen field. On the other hand, Petitioner's request to have an earning capacity as a Physician's Assistant imposed on Respondent only a few days after graduation, is also inappropriate. A grace period, giving the graduate a reasonable time period in which to find employment, needs to be allowed.

It is highly likely that if counsel had filed the request for modification at the time of or shortly after Respondent graduated, by the time the matter reached Court, a clearer determination of Respondent's economic situation would be defined by the passage of that time. Unfortunately, in view of this anticipatory filing, the Court is left to its own design. In this instance the Court believes, perhaps arbitrarily, that a three (3) month grace period would be fair and that during that period, Respondent should make an all out effort to obtain employment commensurate with her degree. Should employment not be found, a review of the matter should be conducted to verify that an appropriate effort has been made. In the instant matter, since Respondent graduated August 11, 2000, an earning capacity as a Physician's Assistant should be deferred until November 11, 2000, assuming employment in a field that has not been obtained prior to that date. After November 11, 2000, the matter should be subject to review.

ORDER

AND NOW, this 17<sup>th</sup> day of November, 2000, for the foregoing reasons, the Family Court Order of September 12, 2000 is hereby affirmed but the matter is remanded to Family Court for purposes of a further hearing to review Respondent's efforts to obtain employment.

By the Court,

Dudley N. Anderson, Judge

cc: Janice Yaw, Esq.  
Richard Callahan, Esq.