

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SCF, : NO. 97-20,395
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
PCF, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated May 10, 2001 in which Respondent was directed to pay child support to Petitioner for the support of the parties' two (2) minor children. Argument on the exceptions was heard July 25, 2001.

Respondent had not appeared at the hearing in Family Court on May 10, 2001 and therefore the hearing officer assessed her an earning capacity of \$2,000.00 per month and added an additional \$250.00 per month attributable to an income tax refund. In her exceptions, Respondent contends the hearing officer erred in assessing the earning capacity and in adding on the income tax refund. She also contests the necessity for child care expenses.

The Court agrees that the hearing officer erred in assessing Respondent an earning capacity of \$2,000.00 per month. Although Respondent was not at the hearing, evidence was presented through the Domestic Relations Office that Respondent's last employer was Liberty Business Information. Many Family Court Orders issued in the past have been based on employment with LBI at which the employee earns \$6.00 per hour. It appears the hearing officer's assessment of \$2,000.00 per month was actually punitive, based upon Respondent's failure to attend the hearing. At \$6.00 per hour, an earning capacity of \$800.00 per month would be more appropriate.

With respect to the income tax refund, again the Court agrees. Since an earning capacity was assessed, which considers the actual tax liability, and since Respondent would not be entitled to any earned income credit as the children reside with Petitioner, an additional amount attributable to an

income tax refund should not have been added to the earning capacity.

Finally, with respect to the necessity for child care expenses, as Respondent was not at the hearing, and presented no evidence regarding her ability to provide child care to eliminate the necessity for child care expense, the Court will address the matter no further.

Considering Petitioner's income of \$1,593.00 per month and Respondent's earning capacity of \$800.00 per month, the guidelines suggest a payment for the support of two (2) minor children in the amount of \$228.00 per month. In order to provide Respondent with at least \$550.00 per month income on which to live, a contribution of only \$22.00 per month toward child care expenses is appropriate. No arrearage payment will be provided for at this time, considering the computed allowance minimum.

ORDER

AND NOW, this day of August, 2001, for the foregoing reasons, Respondent's exceptions are granted in part and denied in part. The Order of May 10, 2001 is hereby modified to provide for a payment for the support of two minor children in the amount of \$228.00 per month and a child care contribution of \$22.00 per month. The arrearage payment is hereby suspended until Respondent experiences a change in income/earning capacity. Respondent's responsibility for excess unreimbursed medical expenses is hereby modified to 33.39% and Petitioner's responsibility is hereby modified to 66.61%.

As modified herein, the Order of May 10, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
 Domestic Relations
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