

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

TLG,	:	NO. 96-20,767
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
TAG,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order of September 15, 2000 in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard February 14, 2001. In her exceptions, Petitioner contends the hearing officer erred in failing to provide for an award of spousal support and a contribution to the mortgage payment. In his exceptions, Respondent contends the hearing officer erred in failing to apportion the support into child support and spousal support, in failing to consider Respondent's voluntary \$50.00 per week payment increase in assessing the arrearage, in awarding a contribution to child care, in failing to provide for credit for payment of the mortgage, in recalculating a rental income capacity for Respondent, and in adding \$250.00 per month attributable to a presumed tax refund. These exceptions will be addressed seriatim.

With respect to Petitioner's contention the hearing officer erred in failing to provide for an award of spousal support and a mortgage contribution, the Court agrees. The prior Order in this matter, dated June 10, 1999, as amended by an Order filed August 11, 1999<sup>1</sup> provided for a

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<sup>1</sup>The Court acknowledges that the Order of August 11, 1999 was appealed by Petitioner to the Superior Court of Pennsylvania, which appeal was pending as of September 15, 2000. The issue raised on appeal, however, was Petitioner's contention that the \$750.00 per month minimum wage

payment of child support, spousal support, and a contribution to Petitioner's mortgage payment. In her request for modification, Petitioner sought a review of Respondent's income, contending that he had obtained employment, with an income higher than the earning capacity upon which the prior Order was based. Once that income was calculated, the hearing officer should have provided for an award of spousal support and a mortgage contribution, as well as child support if appropriate, based upon the parties' respective net incomes.

With respect to Respondent's contention the hearing officer erred by failing to apportion the support into spousal support and child support, the hearing officer simply provided for child support but, as noted above, an award of spousal support will be made and the apportionment Respondent seeks will be accomplished.

With respect to Respondent's contention the hearing officer erred by failing to consider his voluntarily increased payment of \$50.00 per week in assessing the arrearage, the Court notes that the hearing officer did not assess an arrearage, but, rather, an arrearage payment. Any increased payments made by Respondent due to his voluntary \$50.00 per week increase have been accounted for by the Domestic Relations Office.

With respect to Respondent's contention the hearing officer erred in providing for a contribution to child care, Respondent specifically contends that Petitioner provided no written documentation of her child care expense. The Court agrees. A review of the transcript indicates that although Petitioner testified to an average child care expense of \$50.00 per week, and indicated that she pays this amount to one JS, N.T. September 5, 2000 at 34, Petitioner offered no written verification of that expense. The Court will therefore require her to provide such to the Domestic Relations Office or suffer the loss of the contribution required by the Court's Order.

With respect to Respondent's contention the hearing officer erred in failing to provide for

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earning capacity assessed to Respondent was not based on sufficient information. Petitioner's request for modification, filed March 21, 2000, which led to the Order of September 15, 2000, does not address the same issue on appeal, as that Petition contends that Respondent now has employment with a higher income than the earning capacity with which he was previously assessed. The Court thus feels that it has not been deprived of jurisdiction to address the issues raised by the parties.

credit for payment of the mortgage, the Court is unable to discern what it is Respondent means by that. No mention of any payment by Respondent of the mortgage is made in the record.

With respect to Respondent's contention the hearing officer erred in revisiting the issue of his rental income capacity, the Court again agrees. The Petition for Modification filed by Petitioner indicated only that Respondent had now obtained employment. Although the issue was raised by Respondent at the hearing by his indication that his tenants had recently moved out, the Court finds that such is not a sufficient substantial and continuing change of circumstances to justify review of the matter. As the previous Order calculated a rental income/capacity based upon income and expenses, and no evidence of any change in such was offered, the hearing officer should not have recalculated such.

Finally, with Respect to Respondent's contention the hearing officer erred in adding an arbitrary \$250.00 per month assumed tax refund to Respondent's income, for failure to provide his tax return, while the Court agrees with the policy of adding such an assumed refund when a party fails to provide requested documentation, such is not appropriate when the actual tax liability is calculated. Since the hearing officer did calculate Respondent's actual tax liability, the refund should not have been added in the instant situation.

Recalculating Respondent's income while working at \$3,069.00 per month, comprised of \$1,939.00 per month income from employment, \$738.00 per month income from his military retirement, and \$392.00 per month rental income, and considering Petitioner's income from her employment and her tax refund of \$985.00 per month, the guidelines suggest a payment for the support of three (3) minor children of \$1,014.00 per month. Assuming Petitioner provides adequate verification of her child care expense of \$217.00 per month, Respondent's contribution toward that expense is calculated at \$164.00 per month. The spousal support obligation is therefore calculated at \$272.00 per month. Since Petitioner's total income, considering not only her income from employment and her tax refund, but also her income from child support, child care contribution, and spousal support, results in 25% of that income exceeding the mortgage payment of \$576.21 per month, no contribution to the mortgage should be awarded.

For the period of time from May 30, 2000 through June 22, 2000, which period of time the

hearing officer modified the Order to consider Respondent's lack of employment due to an injury,<sup>2</sup> considering Respondent's income without his employment income, of \$1,130.00 per month, the guidelines require a payment for the support of three (3) minor children of \$450.00 per month. Respondent's child care contribution is calculated at \$116.00 per month and an award of spousal support is not appropriate. Although a mortgage contribution could be calculated at \$94.23 per month, such would leave Respondent with less than \$550.00 per month income and the Court therefore feels that a mortgage contribution is also not appropriate in this instance.

#### ORDER

AND NOW, this 21<sup>st</sup> day of February, 2001, for the foregoing reasons, the Family Court Order of September 15, 2000 is hereby modified to provide that effective March 21, 2000 through May 29, 2000 and again effective June 23, 2000 and thereafter, Respondent shall pay to the Domestic Relations Office for the support of three (3) minor children the sum of \$1,014.00 per month plus a child care contribution of \$164.00 per month plus a spousal support payment of \$272.00 per month. For the period from May 30, 2000 through June 22, 2000 Respondent's child support obligation shall be lowered to \$450.00 per month and his child care contribution shall be lowered to \$116.00 per month. During that period of time his spousal support obligation shall be suspended. Petitioner is directed to provide to the Domestic Relations Office within ten (10) days of this date verification of the child care expense testified to at the hearing on September 5, 2000.

The parties' percentage responsibility for excess unreimbursed medical expenses of the children is hereby modified such that Respondent shall be responsible for 75.7% of such and Petitioner shall be responsible for 24.3% of such.

As modified herein, the Order of September 15, 2000 is hereby affirmed.

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<sup>2</sup>Although the Court does not find this approximately three (3) week period to constitute a substantial and continuing change of circumstances such as would justify a modification, Petitioner has not excepted to the hearing officer's action in this regard.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
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Hon. Dudley N. Anderson