

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LAG, : NO. 89-20,968
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
EJD, :
Respondent :

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order dated February 6, 2001, which addressed Respondent's Petition for Modification of child support. Argument on the exceptions was heard May 16, 2001.

In his exceptions, Respondent contends the hearing officer should have calculated his fiancé's income and computed his obligation to the child in their home in order to determine whether a reduction in this instant obligation would be appropriate, and erred in increasing his arrearage payment.¹

¹Respondent had also excepted to the hearing officer's assessment of Petitioner's earning capacity but withdrew that exception at argument. The Court notes that in a previous Order, hearing officer Lyn Hartley had assessed Petitioner a minimum wage earning capacity of \$750.00 per month. In his Order, hearing officer Gerald Seevers reviewed the same information presented to the previous hearing officer and determined that a higher earning capacity would be appropriate. Since the issue is not before this Court, as Respondent has withdrawn his exception that Petitioner should have been assessed an even higher earning capacity and Petitioner has no disagreement with the hearing officer's higher earning capacity assessed, the Court will not reinstate the previous earning capacity but does note that without a change in circumstance, hearing officer Gerald Seevers was without authority to change the previous finding of hearing officer Lyn Hartley.

With respect to Respondent's fiancé's income and Respondent's obligation to their child in their home, the Court agrees with Respondent that the hearing officer had enough information to estimate Respondent's fiancé's income.² At 36 hours per week earning \$25.00 per hour, Respondent's fiancé would have an annual gross income of \$46,800.00. This would provide her with roughly \$3,000.00 per month net income. Respondent's support obligation to the child in his home would therefore be \$406.00 per month but combined with his obligation in this instant matter, would not require a reduction.

Finally, with respect to the arrearage payment, Petitioner agrees that the arrearage payment should not have been increased and therefore the Court will reinstate the \$100.00 per month arrearage payment previously required.

In her exceptions, Petitioner contends the hearing officer erred in requiring Respondent to contribute to the dental insurance for both she and the child inasmuch as her husband carries the insurance for her. The Court agrees. Respondent would be required to contribute to Petitioner's costs if Petitioner were carrying the insurance but since her husband is carrying the insurance, Respondent is required to contribute to only the child's cost. The Order will therefore be adjusted accordingly.

ORDER

AND NOW, this 18th day of May, 2001, for the foregoing reasons, the Order of February 6, 2001 is hereby modified with respect to the dental insurance contribution such that Respondent shall contribute \$3.43 per month to the dental insurance. Further, the arrearage payment is hereby modified to provide for a \$100.00 per month payment rather than \$200.00 per month.

As modified herein, the Order of February 6, 2001 is hereby affirmed.

²Respondent testified that his fiancé works 36 hours per week and earns \$25.00 per hour. The Court notes that the hearing officer calculated Petitioner's earning capacity based upon her testimony of an hourly rate and the number of hours per week she worked, but refused to allow this information to suffice in order to estimate an earning capacity for Respondent's fiancé.

By the Court,

Dudley N. Anderson, Judge

cc: LG
Patricia Bowman, Esq.
Family Court
Domestic Relations
Gary Weber, Esq.
Hon. Dudley N. Anderson