

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JCM, : NO. 00-20,649
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
SEM, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of July 18, 2001, in which Respondent was directed to pay to Petitioner spousal support of \$55.20 per month, after a credit of \$100.00 per month for a car payment Respondent makes on Petitioner's behalf. Argument on the exceptions was heard September 5, 2001.

In his exceptions, Respondent contends the hearing officer erred in the effective date of the Order and in determining his income from Minotti's Pizza.¹

With respect to the effective date, the Court agrees with Respondent that since Petitioner filed her Petition on April 3, 2001, the Order should have been retroactive to that date rather than the date of the hearing. The hearing officer made the Order effective the date of the hearing because the amount of spousal support was being decreased from a previous amount in spite of the fact that Petitioner had filed a request for an increase. The rules indicate that once a Petition is filed, however, the amount of an Order may be modified either upward or downward, depending upon the evidence presented.

With respect to Respondent's income from Minotti's Pizza, it appears the hearing officer

¹Respondent also raised an exception regarding Petitioner's earning capacity but at argument, withdrew that exception.

calculated such based upon his assumption that the paychecks were received on a weekly basis, whereas the documentation provided shows that they are paid on a bi-weekly basis. The correct figure is \$137.00 per month, rather than \$273.00 per month.

Considering Petitioner's earning capacity of \$1,400.00 per month and Respondent's income of \$1,652.00 per month, the guidelines suggest a spousal support of \$100.80 per month. As long as Respondent continues to make Petitioner's car payment of \$100.00 per month, no spousal support payment should be collected.

ORDER

AND NOW, this 7th day of September, 2001, for the foregoing reasons, the Order of July 18, 2001, is hereby modified to provide for a spousal support obligation of \$100.80 per month, effective April 3, 2001, and as long as Respondent continues to pay Petitioner's car payment, which he has been doing beginning in April 2001, the Domestic Relations Office shall not collect any spousal support on Petitioner's behalf.

The instant reduction creates a credit of \$860.40. Since Respondent is not making a payment, the credit cannot be collected by reducing that payment and therefore the parties are directed to consider such credit in the equitable distribution of this matter.

The percentage responsibility for Petitioner's medical expenses shall be modified such that Respondent shall be responsible for 54% of such and Petitioner shall be responsible for 44% of such. As modified herein, the Order of July 18, 2001 shall continue in effect.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
Jeff Yates, Esq.
Brad Hillman, Esq.
NO. 01-21,153
Gary Weber, Esq.