

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

FS,	:	NO. 93-21,293
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
DES,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated July 22, 2001 in which Respondent was directed to pay child support and spousal support to Petitioner. Argument on the exceptions was heard October 17, 2001.

In his exceptions, Respondent contends the hearing officer erred in awarding Petitioner spousal support, in failing to deviate from the support guidelines, and in determining each parties' income/earning capacity.

With respect to the award of spousal support, the Court agrees with Respondent that an entry of an award of spousal support was inappropriate considering the parties' Divorce Decree was entered in September 2000, all economic issues were resolved by agreement incorporated into the Decree, and, indeed, Petitioner has since remarried. The spousal support portion of the prior Order had been terminated by the Domestic Relations Office on September 12, 2000, when the property settlement agreement was filed in conjunction with issuance of the Decree. The spousal support award of the Order of July 22, 2001 will therefore be vacated.

With respect to the argument the hearing officer should have deviated below the guidelines, Respondent contends specifically the hearing officer erred in assessing him a minimum wage earning capacity. The Court does not agree. The hearing officer reviewed Respondent's employment history

and his current medical restrictions and appropriately assessed a minimum wage earning capacity.

With respect to his contention the hearing officer erred in determining each parties' income/earning capacity, Respondent specifically contends Petitioner should have been assessed a higher earning capacity even though she receives social security disability. This issue was raised in previous exceptions and the Court denied those exceptions. Respondent points to no additional evidence of any change in Petitioner's situation and therefore the issue will not be addressed further. The Court does believe, however, the hearing officer erred in determining Respondent's income inasmuch as his income tax refund was added to his earning capacity. Since the earning capacity of \$750.00 per month considers his actual federal income tax obligation, consideration of a federal income tax refund is inappropriate. His support obligation therefore should have been based simply on an income of \$750.00 per month.

ORDER

AND NOW, this 19th day of October, 2001, for the foregoing reasons, the Order of July 22, 2000 is hereby modified to vacate the award of spousal support, to provide for a child support payment of \$184.00 per month, to modify Respondent's responsibility for excess unreimbursed medical expenses to 60%, and Petitioner's to 40%, and to modify the arrearage payment to \$16.00 per month. Further, any actual payment toward excess unreimbursed medical expenses shall be added as arrears, until Respondent experiences an increase in income.

As modified herein, the Order of July 22, 2000 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
FS
William Miele, Esq.