

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

VBW, : NO. 94-21,764
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
JVC, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated May 8, 2001 in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard October 10, 2001.

In his exceptions, Respondent contends the hearing officer erred in determining Petitioner's income, in determining his obligation to contribute to the child care expense, in determining his obligation to contribute to the cost of dental insurance, and in adding his income tax refund to his earning capacity. These issues will be addressed seriatim.

With respect to Petitioner's income, Respondent contends the hearing officer failed to add to her income from Susquehanna Health Services the \$5.60 bi-weekly reimbursement she receives in exchange for not using their health insurance. It appears the hearing officer did not include this income and therefore her income is calculated at \$1,696.35 per month, rather than \$1,684.22 per month.

Next, Respondent contends the hearing officer erred in requiring him to contribute to a child care expense of \$45.00 per week. Again, the Court agrees. The testimony indicated the child care expense of \$45.00 per week was for two (2) children, only one (1) of whom is the child of Respondent. The contribution should be based upon an expense of \$22.50 per week.

With respect to the dental insurance, the hearing officer required a contribution to a dental

insurance expense of \$13.68 bi-weekly, based upon the deduction shown on a pay stub. A review of the transcript indicates that the dental insurance and the cost thereof was not mentioned at the hearing. It appears the insurance covers Petitioner and both minor children and therefore Respondent's contribution should be based on only two-thirds of the cost, rather than the entire cost.

Finally, with respect to Respondent's contention the hearing officer erred in adding his federal income tax refund to his earning capacity, the Court agrees. The hearing officer assessed Respondent an earning capacity of \$8.00 per hour, forty (40) hours per week. He calculated a net earning capacity by deducting 20% for all taxes. He then added an income tax refund, representing both return of the federal taxes withheld as well as an earned income credit. To the extent the actual federal income tax liability was already calculated in assessing the earning capacity, attributing an additional amount as a refund is inappropriate. The Court notes, in addition, the hearing officer assessed Respondent's wife an earning capacity but failed to attribute any of the refund to her in calculating Respondent's obligation to the children at home. The \$8.00 per hour earning capacity will provide Respondent with an annual gross income of \$16,640.00. Respondent's wife's earning capacity of minimum wage will provide her with an annual gross income of \$10,920.00. They will thus have a total annual gross income of \$27,560.00 and their federal income tax liability, using the standard deduction for a married couple and four (4) exemptions, as shown on their 2000 income tax return, results in a federal tax of \$1,354.00. Social security, state and local tax on their annual gross income is calculated at \$3,155.00. An earned income credit of \$753.00 is also calculated, for a net annual income of \$23,803.38. Respondent's share of this, based on his proportionate share of the gross income, is \$14,371.85, or \$1,198.00 per month. His wife's share is \$9,431.53, or \$786.00 per month.

Considering Petitioner's income of \$1,696.00 per month and Respondent's income of \$1,198.00 per month, the guidelines require a payment for the support of one (1) minor child of \$270.00 per month. Considering Respondent's wife's income of \$786.00 per month and Respondent's income of \$1,198.00 per month, the guidelines require a payment for the support of two (2) minor children of \$413.00 per month. As these two (2) obligations exceed 50% of Respondent's income, which is \$599.00 per month, the obligation in the instant matter must be

reduced proportionately to \$236.73 per month. Two-thirds of the dental insurance of \$13.68 bi-weekly represents a monthly cost of \$19.76 and Respondent's proportionate share is \$8.18 per month. Respondent also has an obligation to contribute to Petitioner's child care expense of \$97.50 per month; his proportionate share is \$40.37 per month.

Respondent raised the issue of a child care expense he has incurred since the last hearing in Family Court, contending he now pays \$35.00 per week for child care for the two (2) minor children at home. The Court will consider this as a request for modification effective the date of argument. While this does not affect his basic support obligation, when combined with his contribution to the dental insurance expense¹ it does take his income below the CAM amount of \$550.00 per month. Considering the child care expense of \$35.00 per week, Respondent's contribution to which is calculated at \$91.78 per month, and the dental insurance contribution of \$8.18 per month, for a total of \$99.96 per month, and the \$49.00 which is available to cover those expenses, the dental insurance contribution must be reduced proportionately to \$3.93 per month.

ORDER

AND NOW, this 15th day of October, 2001, for the foregoing reasons, Respondent's exceptions are hereby granted and the Family Court Order dated May 8, 2001 is hereby modified to provide for a child support payment of \$236.73 per month, a child care contribution of \$40.37 per month, and a dental insurance contribution of \$8.18 per month, which shall be further modified, effective October 10, 2001, to a payment of \$3.93 per month. The provision for contribution to arrearages is suspended until Respondent has an increased income, or no longer contributes to any additional expenses other than basic child support. Respondent is directed to provide verification of his child care expense to the Domestic Relations Office within ten (10) days of this date and the adjustment to the dental insurance contribution made herein is contingent upon provision of that

¹At argument Petitioner indicated she no longer has a child care expense and since Respondent's child care expense is being considered only from the date of argument forward, his contribution to Petitioner's child care expense in the past is not affected.

verification. The percentage responsibility toward excess unreimbursed medical expenses is hereby modified such that Petitioner shall be responsible for 58.6% of such and Respondent shall be responsible for 41.4% of such. Any actual obligation toward such expenses shall be added as arrears, however, in light of the CAM, until changed circumstances allow for their collection.

As modified herein, the Order of May 8, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
VW
Randi Dincher, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson