

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

DY, : NO. 94-21,659  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
RDM, :  
Respondent :  
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CP, : NO. 94-21,032  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
RDM, :  
Respondent :

OPINION AND ORDER

Before the Court are Petitioner DY’s exceptions to the Family Court Order of July 26, 2000, in which her request for modification of a prior child support Order was dismissed. Argument on the exceptions was heard January 3, 2001, at which time Ms. Y and Mr. M were both given until Friday, January 5<sup>th</sup> to submit further documentation. The matter is now ripe for decision.

There had been in place an Order dated December 22, 1998 which provided for Respondent to pay support to Petitioner Y for the support of their one (1) minor child, based on Respondent’s minimum wage earning capacity and Petitioner’s<sup>1</sup> earnings of \$1,278.00 per month. On May 1, 2000, Petitioner filed a request for review, indicating as a basis for review that she “now has no income and has signed up for social security.” At a hearing in Family Court on July 6, 2000, Petitioner testified that she was not employed at that time, that she had filed for social security

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<sup>1</sup>Although two (2) Petitioners are named in the caption, the matter before the Court involves only Petitioner DY and therefore, for the sake of brevity, Petitioner Y will be referred to simply as “Petitioner” hereinafter.

disability, was waiting for a decision on her request, but did not have any documentation with her from any physician indicating that she was not able to be gainfully employed. She also indicated that she had been fired from her prior employment while she had been on disability, and had filed a complaint for wrongful discharge against her prior employer. When asked what her disability was, Petitioner indicated “I have a bad back. I have arthritis and stuff setting in my neck and I can’t sit very long so they were-and I had fallen down the steps so I was taken (sic) off to go to physical therapy and going through to see a psychologist because of the mental anguish from work.” N.T., July 6, 2000 at 8. After inquiring of Respondent regarding his prior employment, Respondent also indicating that he was unemployed at the time, the hearing officer requested that Respondent provide his federal income tax return the next day. By Order dated July 26, 2000, the hearing officer dismissed Petitioner’s request for modification based on the fact that she had no documentation with her at the time of the hearing to indicate that she was unable to work. In her exceptions, Petitioner contends the hearing officer erred in allowing Respondent twenty-four (24) hours in which to submit a federal income tax return but in not allowing Petitioner twenty-four (24) hours in which to submit medical verification. The Court agrees with Petitioner that since the record was held open for Respondent to provide further documentation, the record should have been held open for Petitioner as well.

As noted above, both parties were given forty-eight (48) hours, until January 5, 2001, to submit the documentation which should have been submitted to the Family Court Officer in July 2000.<sup>2</sup> Petitioner has provided her application for public assistance benefits, dated March 24, 2000, in which she indicates “I’m having mental problems that I can’t concentrate on things. I have been depressed and feel like dying most of the time. I also can’t sit very long or stand very long due to a bad back. I’m having foot surgery on 4/5/00 also.” In the second section of that application, a physician has indicated that Petitioner’s capacity is limited by checking the “capacity limited” box on the form. That form explains that “capacity limited” means “has a chronic or acute physical or mental

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<sup>2</sup>Respondent was directed to provide this Court with a copy of his 1999 federal income tax return inasmuch as such could not be located at the time of argument, although Respondent indicated to the Court that he had indeed provided such to the hearing officer.

condition which restricts but does not prohibit employment, if work is thirty (30) hours or less a week. The physician also indicates by checking the appropriate block that Petitioner suffers from mental limitations. In the section wherein the physician is directed to describe the applicant's functional limitations, the physician has written "none." The date of the examination by the physician is given as March 30, 2000. The physician's diagnosis appears to be "depression" and the physician indicates that health sustaining medication is needed. Petitioner also provided this Court with a written decision from the Social Security Administration dated July 7, 2000, which she obviously did not have at the time of the hearing in Family Court, denying her request for social security disability benefits based on a finding that she is not disabled. The finding goes on to indicate that although her condition may keep her from doing her job as an insurance claims examiner, it does not keep her from doing other more basic/routine work of a medium level exertion. Finally, Petitioner submitted to the Court a copy of a letter from her attorney dated July 25, 2000, indicating that she has appealed the Social Security Administration's decision. That letter also would not have been available at the time of the hearing in Family Court.

Considering the documentation submitted by Petitioner, the Court does not believe she has sustained her burden of proving that she is incapable of employment which would provide her with an income commensurate with that previously earned. The physician's documentation indicates only that she is suffering from mental limitations and needs health sustaining medication. That documentation was dated March 30, 2000. There is no documentation to indicate that even after being placed on the necessary medication, Petitioner's condition could not be improved to the extent necessary to obtain and maintain appropriate employment. Therefore, the Court will affirm the Family Court Order dismissing Petitioner's request for review, as she has shown no substantial and continuing change in circumstances.

ORDER

AND NOW, this 10<sup>th</sup> day of January, 2001, for the foregoing reasons, the Family Court Order of July 26, 2000 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Jack Felix, Esq.  
RM  
CP  
Family Court  
Domestic Relations  
Gary Weber, Esq.  
Hon. Dudley N. Anderson