

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HDS,	:	NO. 00-20,294
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION - Law
	:	Exceptions
J LS,	:	
Defendant	:	

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order of July 3, 2000 in which Defendant was directed to pay alimony pendente lite to Plaintiff. Argument on the exceptions was heard October 16, 2000.

In her exceptions, Plaintiff contends the hearing officer erred in calculating her income and in failing to require Defendant to contribute to the cost of her health insurance. With respect to the calculation of her income, the Court agrees that inasmuch as she is age 64 and receiving social security, the income she earned from her work for the Census, temporary in nature, should be considered only for the period during which she was doing that work, rather than averaging such over a twelve month period, in the nature of an earning capacity. Since she earned \$2,757.30 from the end of February through June 10, 2000, she averaged \$787.80 per month for that 3 ½ month period. The alimony pendente lite award will be recalculated based upon this change in income. After June 10, 2000, when Plaintiff was no longer working for the Census, she will be assessed with her rental income and social security only.

With respect to Plaintiff's contention Defendant should be required to contribute to the cost of her health insurance, the Court disagrees. 23 Pa. C.S. Section 4324 provides that if health insurance is available at no cost or at a reasonable cost, the Court shall order a contribution to the other

spouse's health insurance premium. The guidelines do not require a contribution where it is not available at no cost or at a reasonable cost, only that if a party is providing coverage, the cost shall be allocated between the parties in proportion to their respective net incomes. Pa. R.C.P. Rule 1910.16-6 (b). Here, Plaintiff is carrying her own health insurance and therefore Defendant is not required to contribute to the cost of such. The Court finds no error in the hearing officer's failure to provide for a health insurance contribution.

In his exceptions, Defendant contends the hearing officer erred in not allowing him to question Plaintiff regarding her assets. Defendant contends he wishes to seek a deviation from the guideline amount based upon Plaintiff's assets and therefore the hearing officer should have allowed him to question her respecting such. The Court agrees. While a deviation may in the end not be supported by the evidence, Defendant has the right to present the evidence. The matter will therefore be remanded for further consideration of Plaintiff's assets.

Defendant also contends the hearing officer erred in failing to assess Plaintiff with a minimum wage earning capacity. Considering Plaintiff's age and health condition, the Court finds no error in the hearing officer's failure to assess a minimum wage earning capacity.

Finally, Defendant contends the hearing officer erred in his finding regarding Plaintiff's rental income. Defendant did not present evidence upon which to base a different finding, however, and therefore the Court will not disturb the hearing officer's determination in this regard.

ORDER

AND NOW, this 25th day of October, 2000, for the foregoing reasons, the Order of July 3, 2000 is hereby modified with respect to Plaintiff's income to provide for an income for Plaintiff of \$1,463.80 per month for the period from April 19, 2000 through June 10, 2000 and an income of \$676.00 per month effective June 11, 2000. Based upon that income, and Defendant's income of \$2,015.00 per month, the guidelines suggest a payment of \$220.48 per month for the period from April 19, 2000 through June 10, 2000, and a payment of \$535.60 per month, effective June 11, 2000. The matter is hereby remanded, however, for consideration of any testimony Defendant wishes

to present regarding Plaintiff's assets, for consideration as a factor for deviation below the guidelines.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Janice Yaw, Esq.
Bret Southard, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson