

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

CMF, : NO. 99-21,841  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
RVD, :  
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of April 10, 2001, in which Respondent's previous child support obligation was modified. Argument on the exceptions was heard June 6, 2001.

The hearing officer assessed Respondent an earning capacity for two (2) separate time periods and Respondent contends he erred in both findings. To a certain extent, the Court agrees.

With respect to the period from the date of the petition December 29, 1999 through October 14, 2000, during which time Respondent resided and worked in Myrtle Beach, South Carolina, the hearing officer assessed Respondent an earning capacity of \$2,167.00 per month net, based on Respondent's testimony that he earned \$500.00 per week net. It appears, however, that such income was earned only during the peak season and not during the off-season. Averaging \$2,167.00 per month net for a period of six (6) months with an earning capacity of \$800.00 per month net, discussed hereinafter, for a period of six (6) months, results in Respondent having an annualized monthly net income during that period of time of \$1,484.00.

With respect to the time period subsequent to October 15, 2000, at which time Respondent relocated to the Williamsport area, the hearing officer assessed Respondent an earning capacity of \$800.00 per month net based upon Respondent's testimony that he believed he could earn

\$12,000.00 per year gross as a bartender. In addition, the hearing officer assessed Respondent an earning capacity of \$500.00 per month net based on the hearing officer's determination of the value of a room at the Kings Inn. Respondent had testified he worked as a musician Friday and Saturday evening at the Kings Inn in exchange for a room. The Court believes this figure is excessive, especially in light of the fact that if Respondent is working Friday and Saturday night as a musician, he is not working as a bartender. The \$800.00 per month earning capacity appears reasonable. The hearing officer also added \$250.00 per month net to Respondent's earning capacity, as a result of Respondent having failed to provide his federal income tax return to the Court. Since the \$800.00 per month earning capacity considers the actual tax liability, addition of a tax refund is inappropriate. The obligation for the time period subsequent to October 15, 2000 should be based on the earning capacity of \$800.00 per month alone.

Considering Petitioner's income of \$1,087.00 per month and Respondent's income of \$1,484.00 per month, the guidelines suggest a payment for the support of one (1) minor child of \$348.05 per month. Considering Respondent's income of \$800.00 per month, the guidelines suggest a payment of \$190.38 per month.

#### ORDER

AND NOW, this 13<sup>th</sup> day of June, 2001, for the foregoing reasons, the Order of April 10, 2001, is hereby modified to provide that effective December 29, 1999 through October 14, 2000, Respondent's child support obligation shall be \$348.05 per month. Effective October 15, 2000, Respondent's obligation shall be \$190.38 per month.

For the time period from December 29, 1999 through October 14, 2000, Respondent's obligation for excess unreimbursed medical expenses of the child shall be 57.72%. Effective October 15, 2000 that obligation shall be reduced to 42.4%.

Finally, the arrearage payment shall be reduced to \$50.00 per month.

As modified herein the Order of April 10, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations  
CF  
RD  
Gary Weber, Esq.  
Hon. Dudley N. Anderson