

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

MM,	:	NO. 92-20,586
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
WM,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Petitioner’s exceptions to the Family Court Order dated September 25, 2002 in which Respondent was directed to pay child support to Petitioner.<sup>1</sup> Argument on the exceptions was heard November 13, 2002.

In her exceptions, Petitioner contends the hearing officer erred in failing to award the increase in support retroactive to a date prior to Petitioner’s request for modification, in awarding the tax exemption for the four (4) children to Respondent, and in failing to require Respondent to make a lump sum payment on his arrearage. These will be addressed seriatim.

With respect to the retroactivity of the Order, although Petitioner had asked the hearing officer to consider increasing her support payment retroactive to a date prior to the date of her Petition, filed in May 2002, on the grounds that Respondent failed to adequately report his increase in income, the hearing officer found that Respondent’s income varies greatly from month to month and that Respondent had previously worked for the same employer, Anchor Ford, and Petitioner “should have had some indication as to his income potential.” The Court believes the hearing officer places the burden on the wrong party in this instance.

It appears Respondent began working at Anchor Ford in February 2001 and at that time

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<sup>1</sup> A further Order was entered providing for the payment of alimony pendente lite and Petitioner’s first

sent a letter to the Domestic Relations Office indicating he began work “on a temporary basis with Anchor Ford ... to supplement my unemployment. My rate of pay is \$5.15 per hour for 25-27 hours a week. My position is as a consultant for their business.” This letter was copied to Respondent’s attorney but not to Petitioner or her attorney. There is no evidence Respondent provided this information to Petitioner or her attorney. At the hearing in Family Court, Petitioner presented Respondent’s bank records for the period from June 2001 through July 2002. After determining Respondent’s income from Anchor Ford to be \$2,569.34 per month, compared to an income of \$1,400.00 upon which the previous Order was based, the hearing officer concluded that Respondent’s income varies greatly from month to month and found that during the first seven (7) months of 2002, Respondent’s deposits averaged \$1,299.47, below the income upon which his previous support obligation was based. He therefore apparently found no reason for Respondent to have reported any change. The hearing officer fails to see, however, that the second half of 2001 shows an average for the last six (6) months of \$2,171.00 per month. It appears from the evidence that Respondent had a significant increase in income, that Respondent had to have been aware of such, but failed to correct the misimpression he created by indicating he was making only minimum wage working only part-time. Under these circumstances, the Court believes the burden of notification should be on Respondent rather than Petitioner. The Court finds there was a misrepresentation, even if not at the beginning, it eventually became such, and that Respondent had a duty to inform both the Domestic Relations Office and Petitioner that what he originally represented was no longer true.

With respect to the date to which the increase should be retroactive, the Court has examined the evidence presented at the hearing in Family Court and finds that Respondent was indeed experiencing a more significant income beginning in June 2001, although it does vary from month to month, than he had earned when the previous Order was entered. Therefore, the Court believes the increase should be retroactive to June 1, 2001.

With respect to the tax exemption the Court finds the hearing officer did analyze the tax returns presented by each party and upon that basis made an informed decision. Even if there is no other evidence of record, an examination of the tax returns is sufficient in this matter.

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exception, alleging error in the failure to award alimony pendente lite, was withdrawn at argument.

Finally, with respect to the payment of arrearages, there indeed will be a significant arrearage considering the retroactivity of the increase and the Court finds a lump sum is appropriate. In making this decision, the Court is mindful of the “choice” Respondent made when failing to correct the misperception he created. Therefore, the Court will require Respondent to pay an additional \$1,000.00 per month toward the arrearage (estimated at approximately \$7,700.00 due to the retroactivity alone), until the arrearage is paid.

ORDER

AND NOW, this 15<sup>th</sup> day of November, 2002, for the foregoing reasons, Petitioner’s exceptions are hereby denied in part and granted in part. The Order of September 25, 2002 is hereby modified to reflect an effective date of June 1, 2001 and the arrearage payment provided for therein is also modified to \$1,000.00 per month, until the arrearage is paid in full.

As modified herein, the Order of September 25, 2002 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations  
William Miele, Esq.  
Jeffrey Yates, Esq.  
Gary Weber, Esq.  
Dana Jacques, Esq.  
Hon. Dudley N. Anderson