

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

JLW,	: NO. 02-20,461
Petitioner	:
	: DOMESTIC RELATIONS SECTION
	:        Exceptions
	:
vs.	: NO. 02-20,282
	:
MAW,	: CIVIL ACTION LAW
Respondent	:        In Divorce

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated August 8, 2002, in which Respondent was directed to pay child support to Petitioner and Petitioner was directed to pay alimony pendente lite to Respondent. Argument on the exceptions was heard September 25, 2002.

In his exceptions, Respondent contends the hearing officer erred in not considering Petitioner’s rental income, in failing to consider that Respondent was unemployed due to a medical condition, in assigning Respondent an earning capacity and in not considering the time Respondent spends with the minor children. These will be addressed seriatim.

With respect to Petitioner’s rental income, although it is not mentioned in the Order of August 8, 2002, it does appear from an examination of Petitioner’s 2001 federal income tax return, particularly the Schedule E attached thereto, that Petitioner does have rental income. She receives rents of \$3,600.00 per year, pays insurance of \$360.00 and mortgage interest of \$2,481.00 per year, giving her a net annual rental income of \$759.00, or \$63.00 per month. This amount should be added to her income for purposes of calculating the support obligations in this matter.

With respect to the contention the hearing officer failed to consider that Respondent is unemployed due to a medical condition, it does appear the hearing officer gave Respondent every opportunity to provide verification that he is currently unable to work. He failed to provide the appropriate verification and therefore the Court will affirm the hearing officer's decision to assess him an earning capacity effective at the expiration of the last period of time for which he did provide documentation.

With respect to the assignment of an earning capacity, as mentioned above, since there was no adequate medical verification of Respondent's inability to work, assessment of an earning capacity is appropriate. The earning capacity used in this particular matter was based upon prior employment, the income from which had been the subject of an Order in a related matter. The Court finds no error in this regard.

Finally with respect to Respondent's contention the time he spends with the children should have been considered, it appears that such was not the subject of testimony and in any event, Respondent does not have the children for more than 40% of the overnights. No consideration is therefore appropriate.

Considering the additional \$63.00 per month, Petitioner's income thus being calculated at \$2,034.00 per month, the alimony pendente lite obligation is calculated at \$263.20 per month. Respondent's child support obligation is therefore recalculated at \$488.39 per month and his contribution to the health insurance expense is recalculated at \$14.53 per month.

#### ORDER

AND NOW, this 2<sup>nd</sup> day of October, 2002, for the foregoing reasons, the Order of August 8, 2002 is hereby modified such that effective July 9, 2002, Respondent shall pay child support of \$488.39 per month and a health insurance contribution of \$14.53 per month. Petitioner's alimony pendente lite obligation of \$263.20 per month shall offset these payments and Respondent's overall payment shall be \$239.72 per month. The Order is further modified to provide that Respondent shall be responsible for 48.07% of the children's excess unreimbursed medical expenses and Petitioner shall be responsible for 51.93% of such. As modified herein, the Order of August 8, 2002 is hereby

affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations  
Christian Lovecchio, Esq.  
Scott T. Williams, Esq.  
MW  
LK  
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Dana Jacques, Esq.  
Hon. Dudley N. Anderson