

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RLW,	:	NO. 86-20,353
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
RCS,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated May 16, 2002, in which Respondent was directed to pay child support to Petitioner for the support of the parties’ two (2) minor children. Argument on the exceptions was heard August 28, 2002.

The only issue raised by Respondent is with respect to the retroactivity of the Order. Although Petitioner filed a request for review on March 25, 2002, the hearing officer made the increase retroactive to August 9, 1999 because Respondent did not notify Petitioner that he changed jobs at that time. Respondent contends that such retroactivity is in error. Considering the record before the hearing officer, the Court agrees.

While the Domestic Relations Code does provide for retroactivity beyond the date of a Petition for Modification in some instances, the standard to be applied is rather clear. The applicable section provides, in pertinent part, “modification may be applied to an earlier period if the Petitioner was precluded from filing a petition for modification by reason of ... misrepresentation of another party ... and if the Petitioner, when no longer precluded, promptly filed a petition.” 23 Pa. C.S. Section 4352 (e). Thus, in order for Petitioner to have the increase in child support made retroactive to a date beyond her Petition for Modification, she must show that she was precluded from filing the petition by reason of misrepresentation of Respondent and

that, when she was no longer precluded, she promptly filed the petition. Specifically in the instant matter, since it is undisputed that Petitioner did learn at some point after August 1999 that Respondent had changed employment, it is her burden to show that she did not learn of the change until just before the petition was filed on March 25, 2002. The Order of May 16, 2002 indicates that when Petitioner learned of the change is not of evidence.

Although the Court could simply modify the Order's effective date to that of the petition, in effect denying Petitioner's request for retroactivity, because the standard which should have been applied is clear under the statute, the hearing officer should have inquired into the relevant areas. Failure to do so requires a remand by this Court in order that the appropriate inquiry might be made.

ORDER

AND NOW, this 30th day of August, 2002, the matter is hereby remanded to Family Court for further hearing on the issue of whether Petitioner promptly filed her Petition after learning of Respondent's change in employment. Further, if the hearing officer determines that Petitioner has carried her burden of proof, a determination of whether the change in employment constituted a substantial change of circumstances such as justifies a review retroactive to August 9, 1999, should also be made.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
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Hon. Dudley N. Anderson