

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

**DEBORAH BARR,
Plaintiff**

v.

**KEVIN BARR,
Defendant**

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No.: 03-20,858

OPINION AND ORDER

Before the Court are the exceptions filed by Defendant to the order issued by the Family Court Hearing Officer on June 27, 2003. Defendant asserts six exceptions to the order which essentially raise two issues. First, he claims that the Family Court Hearing Officer erred when he failed to find that Defendant had suffered a material change in circumstances which would justify a change in his support obligation. Second, he asserts that the Hearing Officer erred when he failed to consider \$440 per month of child support which Wife receives for another child, claiming this amount should be included in Wife's income for purposes of determining Alimony Pendente Lite. For the reasons set forth below, this Court DENIES the exceptions filed by Defendant.

Defendant claims that his employer, Jersey Shore Steel, has cut back his hours so that instead of a forty (40) hour work week with overtime available, he is now offered only a thirty-two (32) hour work week with no overtime, significantly reducing the amount of money he is able to earn.

Defendant claims that this change occurred less than two months prior to the date of the Master's Hearing in this case. The Defendant also testified that his hours were similarly reduced to a four day work week in October and November of 2002 and then restored to him. Notes of Testimony, June 27, 2003, pp. 10 – 11. He further testified that he was able to collect unemployment benefits for the lost day of work each week. Id. The record is silent as to whether Defendant expects to collect unemployment benefits during this period of working 32 hours per week. However, the Defendant had nothing in writing from his employer to indicate whether in fact this would be a permanent situation or a temporary one. Following the hearing, the Master issued an order which found that Defendant had failed to prove a material change in circumstance. In light of the testimony presented and comments made by the Family Court Hearing Officer regarding the nature of the change, the Court will not disturb the factual findings of the Hearing Officer in this case.

Defendant next asserts that the Hearing Officer erred when he failed to consider as income to Wife the child support payment which she receives each month from another party for the support of a child who is not the subject of this case. Wife currently receives \$440 per month for two additional children in her household.

Pennsylvania law defines "income" for purposes of support payments at 23 Pa.C.S.A. Section 4302 and the Pennsylvania Rules of Civil Procedure, Rule 1910.16-2. The definition includes an extensive, but not

exclusive, list of examples of income. However, neither the statute nor the rules mention whether a child support payment from another source is to be included in the computation of income. Under 23 Pa.C.S.A. Section 4302, the statute provides that income includes “other entitlements to money or lump sum awards, without regard to source, including lottery winnings; income tax refunds; insurance compensation or settlements; awards and verdicts; and any form of payment due to and collectible by an individual regardless of source.” See also Pa.R.C.P. 1910.16-2(a)(8). However, this Court declines to find that child support payments made for other children in the home are to be considered income as defined by Pennsylvania law. This Court believes that, similar to alimony payments, which are specifically defined as income, 23 Pa.C.S.A. 4302; Pa.R.C.P. 1910.16-2(a)(7), the reasons for a child support payment must be considered. See note following Pa.R.C.P. 1910.16(a)(7).¹ Child support payments are made for the benefit of the child, not the adult caring for that child. They cannot be considered funds which exist to finance the general living expenses of the adult and therefore are not income to the adult. The practical effect of Defendant’s request to include in Wife’s income the child support she receives for other children would be that the support received in this case would then be considered in the support case concerning the other children and would

¹ The note to Pa.R.C.P. 1910.16-2(a)(7) states that “(s)ince the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient’s gross income must also vary. For example, if obligor is paying \$1,000 per month in rehabilitative alimony for the express purpose of financing obligee’s college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance obligee’s general living expenses, inclusion of the alimony is appropriate.” It seems clear from this Note that the purpose for a payment is to be considered.

require endless adjustment to income so that no definite amount could ever be calculated. In other words, amount A would be set, amount B would be reset, amount A would need to be reset causing amount B to reset again, ad infinitum.

Finally, Defendant asserts that the Hearing Officer erred by refusing to consider the economic reality that the support order entered in this case results his having no take home pay at all despite working thirty-two (32) hours per week. In light of this Court's finding that the change from a forty (40) hour work week plus overtime to a thirty-two (32) hour work week without overtime is anything other than a temporary change with the possible potential of unemployment compensation, the Defendant's exception on this issue will also be denied.

ORDER

AND NOW, this ____ day of August, 2003, for the reasons set forth above, it is ORDERED and DIRECTED that the exceptions filed by the Defendant to the Family Court Hearing Officer's order of June 27, 2003 are DENIED.

By the Court,

Nancy L. Butts, Judge J.

xc: Marc Drier, Esquire
Jeffrey Yates, Esquire
Domestic Relations
Family Court (Seevers)
Hon. Nancy L. Butts
Diane L. Turner, Esquire
Gary Weber, Esquire