

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

LAB, : NO. 01-20,395  
Petitioner :  
 :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
DJB, :  
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated March 18, 2003 in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard May 21, 2003.

In his exceptions, Respondent contends the hearing officer erred in the determination of his income/earning capacity, in the addition of a tax refund to his earning capacity, in failing to award the tax exemption for the children to him, and in calculating Petitioner's income.<sup>1</sup> These will be address seriatim.

With respect to the determination of his income/earning capacity, Respondent specifically alleges a mathematical error in calculating his earning capacity and the Court agrees such an error was made. The hearing officer assessed an earning capacity of \$10.58 per hour but then found a monthly net income of \$1,833.87, when that hourly rate will produce a gross monthly income of \$1,820.00. In any event, it appears Respondent's actual income from his new employment is higher than the earning capacity assessed to him by the hearing officer and therefore the Court will calculate his support obligation based upon his actual income. The pay stub presented shows that as of February 22, 2003, Respondent had earned \$4,000.00. This projects to an annual gross income of \$23,111.00 and after considering the federal tax based on

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<sup>1</sup> In his written exceptions, Respondent also raised alleged errors regarding the childcare expense, but withdrew those exceptions at the time of argument.

filing single with one exemption, the Social Security and Medicare tax and the state and local tax, it appears Respondent will have a monthly net income of \$1,493.00.<sup>2</sup>

With respect to the income tax refund, since the Court has calculated Respondent's actual tax liability, addition of a refund is inappropriate in this instance, where no earned income credit is available.

With respect to the tax exemption, as Respondent failed to request the exemption at the hearing in Family Court, and thus no evidence regarding the appropriateness of such an award was presented, the Court will not address the matter further. Respondent is free to file a Petition for Modification if he wishes to have the matter considered.

Finally, with respect to Petitioner's income, it appears the hearing officer did err in his calculation. The evidence presented indicated that Petitioner works 40 hours per week and earns \$5.30 per hour. The hearing officer apparently based her income on a pay stub which showed less than 40 hours per week. The Court has determined that at that hourly rate, Petitioner will have an annual gross income of \$11,024.00. She will pay no federal tax but will have an earned income credit of \$4,008.00. After deducting Social Security and Medicare tax, as well as local tax (she will receive state tax forgiveness and thus pay no state tax), Petitioner will have a monthly net income of \$1,164.00.

Considering Petitioner's income of \$1,164.00 per month and Respondent's income of \$1,493.00, the guidelines suggest a payment for the support of two minor children of \$499.53 per month. Further, Petitioner's contribution toward the cost of health insurance is calculated at \$105.23 per month.

### ORDER

AND NOW, this 23<sup>rd</sup> day of May, 2003, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. The Order of March 18, 2003 is hereby modified such that effective January 29, 2003, Respondent shall pay for the support of two minor children the sum of \$499.53 per month. His contribution toward childcare of

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<sup>2</sup> The earning capacity assessed by the hearing officer, considering the correct calculation, would have been \$1,417.00 per month net.

\$100.00 per month shall continue in effect, also effective that date. Effective April 1, 2003, Petitioner shall contribute to the cost of health insurance the sum of \$105.23 per month, to be offset against Respondent's support obligation. Finally, the percentage contribution toward excess unreimbursed medical expenses is also modified such that Petitioner shall be responsible for 43.81% of such and Respondent shall be responsible for 56.19% of such.

As modified herein, the Order of March 18, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Domestic Relations  
Family Court  
Christopher Williams, Esq.  
Randi Dincher, Esq.  
Dana Jacques, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson