

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CAK,	:	NO. 02-21,043
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
GEK,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order dated April 30, 2003 in which Respondent was directed to pay spousal support to Petitioner. Argument on the exceptions was heard June 4, 2003.

In her exceptions, Petitioner contends the hearing officer erred in assessing her with an earning capacity and in failing to include Respondent's interest and dividends in the determination of his income. In his exceptions, Respondent contends the hearing officer erred in failing to assess Petitioner with an earning capacity based upon a 40 hour work week and in finding entitlement to spousal support. These will be addressed seriatim.

With respect to Petitioner's contention regarding her earning capacity, although Petitioner agrees with the concept, she contends the hearing officer should have allowed a period of time during which no capacity was assessed in order to give her the opportunity to find employment commensurate with her capacity. It appears from the record that Petitioner had previously been employed as a registered nurse but while off due to a disability, her employer physician left the practice of medicine and when she was released to return to work by her physician, her former position was no longer available. There is nothing in the record before this Court, however, to indicate that Petitioner is not at this time able to find employment as a registered nurse. This exception will therefore be denied.

With respect to the inclusion of interest and dividends in Respondent's income, it does

appear Respondent's income tax return was presented, and used by the hearing officer in determining his monthly net income, but that the interest and dividends shown thereon were not included in his income. The Court agrees with Petitioner that such income should have been included and therefore an additional \$184.58 per month (the average monthly income from interest and dividends totaling \$2,215.00) will be added to Respondent's income.¹

With respect to Respondent's contention the hearing officer should have assessed an earning capacity based upon a 40 hour work week, it appears the earning capacity assessed by the hearing officer was based upon Petitioner's employment prior to her period of disability, during which she worked for a physician. Although not established by the record, statements made by counsel at argument indicated that Petitioner worked full-time but not 40 hours per week, instead working 36 to 38 hours per week. Respondent argues that the capacity should be based upon 40 hours per week rather than the 36 to 38 hours per week worked by the Petitioner. The Court finds no merit in this argument and will dismiss this exception without further discussion.

Finally, with respect to the issue of entitlement, that issue is considered res judicata as this Court previously decided before remand of the matter for a determination of the amount of support, that Petitioner was indeed entitled to spousal support.

For the time period from July 22, 2002 through January 8, 2003, considering Petitioner's income of \$2,013.78 per month and Respondent's income of \$5,203.20 per month, and also applying a credit of \$480.91 per month for the loan payment, Respondent's support obligation is \$794.86 per month. For the period from January 9, 2003 through March 7, 2003, considering Petitioner's income of \$2,524.29 per month and Respondent's income of \$5,087.58 per month and also allowing a credit for the loan payment, Respondent's support obligation is \$544.41. For the time period from March 8, 2003 through April 14, 2003, considering Petitioner's income of \$231.83 per month and Respondent's income of \$5,087.58 per month, and allowing a credit for the loan payment, Respondent's support obligation is \$1,461.39 per month. For the time period from April 15, 2003 through April 29, 2003, considering Petitioner's earning

¹ No taxes are deducted as the total tax obligation was already used by the hearing officer, based on the tax return which included those interest and dividends currently being included in his income for purposes of support.

capacity/income of \$2,245.61 per month and Respondent's income of \$5,087.58 per month, and allowing a credit for the loan payment, Respondent's support obligation is \$655.88 per month. Finally, effective April 30, 2003, considering the same incomes but no longer allowing a credit for the loan payment, Respondent's support obligation is \$1,136.79 per month.

ORDER

AND NOW, this 6th day of June, 2003, for the foregoing reasons, the Order of April 30, 2003 is hereby modified to provide for the support amounts enumerated above, and also to amend the percentage responsibility for excess unreimbursed medical expenses of Petitioner, in proportion to the parties' respective net incomes as found herein.

As modified herein, the Order of April 30, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

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