

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

DLV, : NO. 92-21,291  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
BLS, :  
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated November 13, 2002, in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard January 8, 2003.

In his exceptions, Respondent contends the hearing officer erred in deducting federal taxes from Petitioner's gross income in calculating her net income, in failing to obtain a complete income tax return from Petitioner, in calculating his net income by dividing the gross income by 38 weeks rather than 40 weeks, in failing to award him the dependency exemption for the minor child, and in failing to consider the increase in the cost of his health insurance as of January 1, 2003. These will be addressed seriatim.

With respect to the deduction of federal income taxes from Petitioner's gross income, Respondent contends none should be deducted, as Petitioner does not pay federal income tax. While it is true that she apparently paid no federal income tax for income earned in 2001, it appears she does now work for employers, at least two of the three, who report her earnings and that she does therefore pay tax on her earnings. According to the Order of November 13, 2002,

Petitioner is employed by American Home Care Services and Janice Kay's Diner, both of which employers pay her as an employee and withhold appropriate taxes, as well as report her income to the federal government. It also appears that Petitioner works for Angie's during the summer, under the table, and therefore she will not be paying taxes on that income. According to the Order, Petitioner earns \$97.41 per week gross from her employment with American Home Care Services and \$141.00 per week gross from her employment at Janice Kay's. She thus earns \$12,397.32 per year gross. Adding this to her husband's annual income of \$44,991.00 would indicate a total family gross income of \$57,388.00. From the portion of the tax return which was presented to the Court, it is possible to deduce that the family claims the standard deduction and three exemptions, and also receives the \$600.00 child tax credit. The family federal tax liability is thus calculated at \$5,561.00, Petitioner's share of which would be \$1,201.00. Her social security and Medicare tax on the \$12,397.00 is calculated at \$948.00, her state tax at \$347.00, and her local tax (1.75%) at \$217.00. She thus has a monthly net income of \$807.00. The \$400.00 earned by her under the table, averaged over the year at \$33.00 per month, brings her total monthly income to \$840.00.

With respect to the failure to obtain a complete tax return, while it is true the hearing officer should have made further inquiry when receiving only the first page, it is nevertheless possible to obtain the necessary information from the documents provided.

With respect to Respondent's income, the Court agrees with Respondent that a period of 40 weeks, rather than 38, is covered by the year-to-date figures shown on the pay stub used by the hearing officer. The Court has recalculated his income at \$3,417.00 per month, and adding the \$107.00 per month average tax refund, Respondent has a monthly net income of \$3,524.00.

With respect to Respondent's contention the hearing officer erred in failing to award him the tax exemption, it appears this issue was not raised at the hearing in Family Court and therefore will not be addressed herein. Respondent is advised to file a Petition for Modification if he wishes to have the tax exemption awarded to him.

Finally, with respect to the contention the hearing officer erred in failing to consider the increase in the cost of his health insurance, it appears that issue was also not raised in Family Court and that the increase was not even contemplated at the time of the hearing in Family Court. Again, Respondent is advised to file a Petition for Modification.

Considering Petitioner's income of \$840.00 per month and Respondent's income of \$3,524.00 per month, the guidelines require a payment for the support of one minor child of \$676.69 per month. Petitioner's proportionate share of the health insurance premium paid by Respondent is \$41.45. Respondent therefore has an overall obligation of \$635.24 per month.

#### ORDER

AND NOW, this 9<sup>th</sup> day of January, 2003, for the foregoing reasons, the Order of November 13, 2002 is hereby modified to provide for a payment for the support of one minor child in the amount of \$635.24 per month, considering Respondent's obligation to Petitioner as offset by her contribution to the cost of health insurance carried by Respondent. This obligation is effective the date of Petitioner's request, September 30, 2002.

The percentage responsibility for excess unreimbursed medical expenses is also modified such that Petitioner shall be responsible for 19.25% of such and Respondent shall be responsible for 80.75% of such.

As modified herein, the Order of November 13, 2002 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: DV  
Janice Yaw, Esq.  
Family Court  
Domestic Relations Office  
Dana Jacques, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson