

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

G.J.,	:	
Plaintiff	:	
	:	
v.	:	No. 04-20,906
	:	
J.J., SR.,	:	
Defendant	:	

**OPINION and ORDER**

This opinion addresses the exceptions filed by both parties to the Master's order of September 27, 2004, granting Wife APL.

Wife objects to the Master's assessment of her earning capacity. She earns \$9.84 per hour working at a school cafeteria 27 ½ hours per week. She also cleans two residences, earning \$130 per month year-round. The Master assessed Wife at forty hours per week, at \$9.84 per hour, and also included the income from cleaning, thereby assessing Wife at more than full time work.

This case is similar to Hull v. Hull, Lyc. Co. #04-20,530. In Hull, the wife worked part-time at Sears, earning \$8.48 per hour. The Husband argued that she should be assessed at \$8.48 per hour, on a full time basis. We stated:

Ordinarily, the court would assign her a full-time minimum wage earning capacity. However, that would put Wife at \$750 per month, whereas using her actual income results in an assessment of \$770.92 per month. Husband argues that the court should assess her full-time at \$8.48 per hour. The court rejects that suggestion, as Wife is clearly paid that relatively high wage because of the part-time nature of the work, which brings no benefits. It would be unrealistic to expect Wife to earn that wage working full-time, given her work history.

Wife in this case also appears to be the classic minimum wage earning capacity worker, and the court would assess her as such if her actual earnings did not exceed \$750 per month. Also like the Wife in Hull, she earns a relatively high wage because of the part-time nature of the work. Furthermore, there is no prospect of full-time work at

the present job. Moreover, it is unrealistic to expect her to obtain an additional job, for twelve and one-half hours per week, earning \$8.48 per hour full time. And finally, it is unfair to add on the income derived from her cleaning work, in addition to assessing Wife full time work.

However, the court will assess Wife a full-time minimum wage earning capacity during the summer months, when she is not working at the school cafeteria. During the summer, since she is assigned a full-time earning capacity, the court will not include the cleaning income. Wife's income from the cafeteria is therefore calculated as follows: \$9.89 per hour at 27.5 hours per week is \$271.98 per week. Taxes and retirement are 21.50%, or 58.47, which leaves Wife with a net of \$213.51 per week, or \$925.21 per month for nine months, for a total of \$8326.89 per year from her cafeteria job. Nine months of cleaning at \$130 per month is \$1170, and three months of full-time minimum wage work during the summer is \$2250. Wife's total income is therefore \$11,746.89 per year, or \$978.91 per month.

Regarding Husband's income, the Master took Husband's year-to-date paystub, deducted taxes, and arrived at a weekly net income. Husband complains this is unfair because the year-to-date money Husband has received from Wegmans includes one-time per year payments made in March. Therefore, the Master should have backed this amount out of his year-to-date when calculating his monthly income. The court agrees. The one-time payments should have been annualized, and reduced by taxes, before calculating a monthly amount attributable to them.

Husband's three paystubs show that the categories of "Share Grant, Other Pay, Lump Sum, and Share Tax" remain unchanged, which supports Husband's testimony that the amounts shown under these categories (\$12,604.49) are one-time payments each year. Transcript, pp. 40 and 41. Husband's income without the one-time March payments is \$1274.92 per week gross, and \$872.81 per week net. The one-time March payments, reduced by 30.74% for taxes, which is the percentage taken out of his gross

pay, adds on \$727.49 per month. With the additional \$78 per month from truck use, Husband's income is \$4587.67 per month.

Husband next complains the Master did not reduce Husband's income by his food allowance of \$150 per week. Husband argues that the food allowance is included in his paycheck. Husband's own testimony, however, belies this claim. On p. 19 of the transcript, when asked whether he receives any money *other than that contained in his paycheck*, he answered, "Yes." When asked what he receives, he answered, "I get \$150 a week for food allowance, \$30 a day."

With Husband's income at \$4587.67 per month and Wife's income at \$978.91 per month, APL is calculated to be \$1443.50 per month.

**ORDER**

AND NOW, this \_\_\_\_\_ day of December, 2004, for the reasons stated in the foregoing opinion, the Exceptions filed Wife to the Master's order of September 27, 2004 are granted and the Exceptions filed by Husband are granted and it is ordered as follows:

1. APL shall be set at \$1443.50 per month. Wife shall be responsible for 17.59% of the health insurance, or \$3.89 per month. Total APL payments shall therefore be \$1439.61 per month.
2. Wife shall be responsible for 18% of all her unreimbursed medical expenses beyond the first \$250 each year, and Husband shall be responsible for 82%.
3. In all other respects, the Master's order of September 27, 2004 is affirmed.

BY THE COURT,

\_\_\_\_\_  
Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Richard A. Gray  
Joy McCoy, Esq.  
Randi Dincher, Esq.  
Domestic Relations (RW)  
Family Court  
Gary Weber, Esq.