

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

T.V.,	:	
Plaintiff	:	
	:	
v.	:	No. 03-20,439
	:	
R.V.,	:	
Defendant	:	

**OPINION and ORDER**

This opinion addresses the Exceptions filed by both parties to the Master’s order of January 21, 2004, in which Wife was directed to pay Husband alimony pendente lite of \$382.13 per month.

Wife asserts the Master erred in not inquiring whether Husband needs the APL. As the Pennsylvania Superior Court stated in Terpak v. Terpak, 697 A.2d 1006 (Pa. Super. 1997), a court may not deviate from the guidelines on the ground that the child or spouse does not need the amount of money suggested by the guidelines. The trier of fact need not, and should not, consider in the first instance the actual expenses of the parties to determine the child’s or spouse’s reasonable needs. Instead, the court must assume initially that the guideline amount constitutes the amount necessary to meet the reasonable needs of the child or spouse. The court may then deviate from the guideline amount based upon the factors set forth in Rule 1910.16-5. Wife is not arguing that one of the deviation factors applies. Rather, she is making the general argument that because the income difference between herself and her husband is minimal, Husband does not need the money. That assertion is not a proper basis for deviation.

Wife also claims the Master should have included in Husband’s income money he earned for snowplowing. However, this exception will be denied, as the amount was minimal. Moreover, Husband has been assessed an earning capacity at the salary he

earned for a former full-time job, rather than his current income, which includes unemployment. It would be unfair to assess Husband with an earning capacity and also include some of his actual earnings.

Wife's other exceptions, namely the proration of her bonus and the Master's decision to leave the issue of a loan to equitable distribution, will be dismissed.

Husband's exceptions are twofold. First, he asserts the Master erred in ordering him to contribute to health insurance, as Husband is not covered under Wife's policy. Wife admitted her policy does not cover Husband, so that exception will be granted. Second, Husband contends the Master erred in using a 20% figure for taxes, when the Master should have used 22%. Husband is correct, and his estimated tax liability is as follows: (1) Federal: 11.35%, or \$314.77 annually, (2) Social Security: 6.2%, or \$171.95 annually, (3) Medicare: 1.45% or \$40.21 annually, (4) State: 3.07% and \$85.14 annually, (5) PA Unemployment: .03%, or \$.83 annually, and (6) Local: 1.7%, or \$47.15 annually. That leaves Husband with a monthly income of \$2113.28.

With Wife's monthly income at \$3174 and Husband's monthly income at \$2113.28, APL is \$424.29 per month.

**ORDER**

AND NOW, this \_\_\_\_\_ day of March, 2004, for the reasons stated in the foregoing opinion, Wife's exceptions are dismissed and Husband's exceptions are granted and it is ordered that Wife's APL payment shall be \$424.29 per month. Husband owed no health insurance contribution. In all other respects, the Master's order of January 21, 2004 shall remain in full force and effect.

BY THE COURT,

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

cc: Dana Jacques, Esq., Law Clerk  
Hon. Richard A. Gray  
Janice Yaw, Esq.  
Christian Lovecchio, Esq.  
Family Court  
Gary Weber, Esq.