

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CAL,	:	NO. 88-20,779
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
RJL,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order dated September 22, 2003, as amended by Order dated September 25, 2003, in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard January 14, 2004.

In his exceptions, Respondent contends the hearing officer erred in assessing him an earning capacity as a taxi driver, in including \$350.00 per month rental income, in giving him only a 10% deviation, in failing to consider the fee charged with respect to the wage attachment, and in requiring him to document his medical expenses. In her exceptions, Petitioner contends the hearing officer erred in calculating her income, in deducting 20% for taxes in calculating Respondent's earning capacity, in deducting 15% for taxes on Respondent's disability income, in failing to include \$500.00 per month Respondent receives for housing a foreign exchange student, and in allowing Respondent a 10% deviation in his child support obligation. These exceptions will be addressed seriatim.

With respect to the earning capacity assessed Respondent as a taxi driver, a review of the transcript indicates there was nothing to support such an assessment other than Respondent's admission that he can still drive. He presented medical testimony that he is unable to continue his employment at the post office and while that testimony indicates that he should be able to work at some sort of employment, the Court finds no reason to assess an earning capacity as a taxi driver. A minimum wage earning capacity appears appropriate under

the circumstances.

With respect to the inclusion of \$350.00 per month rental income in Respondent's income for purposes of child support, the Court sees no error. Respondent testified he receives \$350.00 per month for renting out a room in his home. While he argues that he was not given the opportunity to present evidence regarding his expenses, a review of the transcript indicates that Respondent did have such an opportunity, as he was represented by counsel and nothing prevented him from introducing evidence regarding his expenses. The Court believes in any event that the likelihood of inordinate expenses related to renting a room in his home is remote. The Court will therefore include the \$350.00 per month rental income in Respondent's income for purposes of his child support obligation.

With respect to Respondent's argument he should have been provided with more than 10% deviation, the deviation provided was based upon a prior Order that contained a 10% deviation due to Respondent's medical expenses. The hearing officer noted that the medical expenses as determined at the time of the prior Order constituted 17% of Respondent's income at that time and that based upon a new income finding, represent 20%. As the Court has determined in resolving the instant exceptions that Respondent's monthly net income is actually higher than that found by the hearing officer, it appears that the same reasoning indicates that continuing the 10% deviation is indeed appropriate.

With respect to the wage attachment fee, Respondent indicated at argument that he was not pursuing this exception.

With respect to Respondent's contention he should not have to document his medical expenses, Respondent bases such on the fact that Petitioner was not required to document her 2002 tax bill. It is noted the hearing officer did not deduct from Petitioner's income the taxes she testified she had to pay. In any event, the Court is going to require Respondent to document his medical expenses in order to receive the benefit of the 10% deviation discussed above, unrelated to whether or not Petitioner was required to document her tax bill, as such appears appropriate under the circumstances.

With respect to Petitioner's contention the hearing officer erred in the calculation of her income, the Court agrees. While the pay stubs presented by Petitioner covered the period from March 8, 2003 through September 5, 2003, it is clear from the pay stubs themselves that the

year-to-date figures on the most recent pay stub covered the entire year to that point, or 18 bi-weekly periods. Those figures show a monthly net income of \$1,252.00, not \$1,732.00. The child support obligation will be adjusted accordingly.

With respect to Petitioner's contention the hearing officer erred in deducting 20% for taxes in calculating Respondent's earning capacity and in deducting 15% for federal tax on his disability income, the Court agrees in both respects. Respondent will be assessed a minimum wage earning capacity of \$5.15 per hour, which results in an annual gross income of \$10,712.00. Federal income tax is calculated at \$303.00 (considering the standard deduction for single person and one exemption), social security and Medicare tax is calculated at \$819.00, and state and local tax at \$407.00. Respondent will therefore have an annual net income of \$9,183.00, or \$765.00 per month net. It appears this actually indicates a total tax liability of 15% rather than 20%. With respect to the disability payments, Respondent testified that the figures were net, rather than gross and therefore an additional deduction of 15% would be inappropriate. Also in that regard, at the exceptions argument, Respondent indicated that the first payment of record was a partial month and that the second payment of record, \$1,555.00 per month, is his regular monthly payment. Therefore averaging those two figures was inappropriate and the latter figure will be used in calculating Respondent's child support obligation.

With respect to the monies Respondent receives for housing a foreign exchange student, the record indicates he incurs expenses which leave nothing to be added for purposes of child support.

Finally, with respect to the 10% deviation, as noted above, the Court believes the deviation appropriate based upon Respondent's medical bills but it does appear that Respondent should be required to verify such. The Court will therefore require him to provide proof to this Court of his continuing payments over the last six months and verification of the balances still due. If such documentation is not provided, the deviation will not be allowed.

Considering Petitioner's income of \$2,337.00 per month and Respondent's income of \$2,670.00 per month¹ the guidelines suggest a payment for the support of one minor child in the

¹ \$765.00 per month earning capacity, \$1,555.00 per month disability income, and \$350.00 per month rental.

amount of \$494.37 per month. Respondent's obligation toward the health insurance premium paid for the child, of \$63.16 per month (1/3 of \$189.48 per month), is calculated at \$33.68 per month.

ORDER

AND NOW, this 20th day of January, 2004, for the foregoing reasons, the Order of September 22, 2003, as amended by Order dated September 25, 2003, is hereby modified to provide for a payment for the support of one minor child, effective August 6, 2003, of \$494.37 per month plus an additional \$33.68 per month toward the cost of the child's health insurance. Respondent is directed to provide directly to this Court within 15 days of this date proof of his payments toward medical expenses over the last six months, to include all payments on prior bills and toward on-going expenses, as well as verification of balances still due. If such proof is not provided to this Court, the Order as entered will remain in effect. If such proof is provided and the Court is satisfied that Respondent indeed has the extraordinary expense, the Domestic Relations Office will be directed to provide a 10% deviation from his monthly obligation, retroactive to August 6, 2003, by further Order of Court.

As modified herein, the Order of September 22, 2003, as amended by Order dated September 25, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

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