

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CLE,	:	NO. 00-20,250
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
PAL,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order dated November 21, 2003, in which the parties were directed to pay child support to each other for the support of the children in their respective custody. Argument on the exceptions was heard January 28, 2004.

In her exceptions, Petitioner contends the hearing officer erred in the calculation of the support and in determining her income. The Court agrees in both regards.

With respect to the calculation of support, inasmuch as Respondent has primary physical custody of one of the parties' four (4) minor children and the other three minor children are in the shared physical custody of both parties, the hearing officer applied the calculation methods set forth in this Court's decision in Loudenslager v Loudenslager, No. 97-20,348. Petitioner argues that Loudenslager does not apply to the situation in the instant matter and the Court agrees. In Loudenslager, the child who was not in the shared physical custody of the parties was in the primary physical custody of the payee. The payor in that matter therefore had an obligation of support to the payee for both the child in the primary physical custody of the payee, as well as for the children in the shared physical custody of the parties. In the instant matter, the child not in the shared physical custody of the parties is in the primary physical custody of the payor. Therefore, the calculation is simply an offset, Petitioner owing support to Respondent for the child in his primary physical custody, and Respondent owing

support to Petitioner for the three children in the parties' shared physical custody, inasmuch as he has the higher income and is thus the payor in this matter.

With respect to Petitioner's income, the hearing officer continued an earning capacity contained in the prior Order and then added a tax refund to that earning capacity. As the prior Order calculated the earning capacity based upon Petitioner's actual tax liability, adding a tax refund is inappropriate.¹ Thus, the Court will consider only Petitioner's earning capacity of \$1,226.00 per month net.

For the time period from August 22, 2003 through December 31, 2003, considering Petitioner's income/earning capacity of \$1,226.00 per month and Respondent's income of \$4,273.00 per month, the guidelines suggest a payment for the support of the minor child in Respondent's custody of \$222.06 per month and considering the equal shared custody of the other three children, the guidelines suggest a payment for the support of those children of \$968.29 per month, resulting in an offset payment owing from Respondent to Petitioner of \$746.23 per month. Petitioner's share of the health insurance contribution of \$105.32 per month is calculated at \$23.48 per month, resulting in an overall payment owing from Respondent to Petitioner of \$722.75 per month.

Effective January 1, 2004, considering Petitioner's income/earning capacity of \$1,226.00 per month net and Respondent's monthly net income of \$4,139.00, the guidelines suggest a payment for the support of the child in Respondent's custody of \$222.81 per month. Considering the equal shared custody of the other three children, the guidelines suggest a payment for the support of those children in the amount of \$939.52 per month, resulting in an offset amount owing from Respondent to Petitioner of \$716.71 per month. Petitioner's share of the health insurance premium of 214.46 per month is calculated at \$49.00. Thus, Respondent has an overall obligation to Petitioner of \$667.71 per month.

¹ The Court notes that Petitioner would no longer be entitled to an earned income credit, as she no longer has primary physical custody of the children. Thus, although an earned income credit refund may in some cases be added to an earning capacity, in the instant case that rule does not apply.

ORDER

AND NOW, this 29th day of January, 2004, for the foregoing reasons, the Order of November 21, 2003 is hereby modified to provide, for the period from August 22, 2003 through December 31, 2003, for a payment from Respondent to Petitioner of \$722.75 per month, and effective January 1, 2004, \$667.71 per month. Inasmuch as this reduction creates a credit, Respondent's monthly payment shall be reduced by \$100.00 per month until the credit is consumed in full.

The percentage responsibility for excess unreimbursed medical expenses is also modified such that for the period from August 22, 2003 through December 31, 2003, Petitioner shall be responsible for 22.29% of such and Respondent shall be responsible for 77.71% of such. Effective January 1, 2004, Petitioner shall be responsible for 22.85% of the excess unreimbursed medical expenses of the children and Respondent shall be responsible for 77.15% of such.

As modified herein, the Order of November 21, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

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