

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

M.L.B.,	:	
Plaintiff	:	
	:	
v.	:	No. 93-20,727
	:	PACES NO. 340002338
R.A.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by both parties to the Master's orders of September 14, 2005 and September 29, 2005, awarding Mother child support.

The primary issue in this case is Mother's earning capacity. Mother's sole income is \$606 per month she receives in Supplemental Security Income. She has received SSI for the last five to six years. She is fifty years old, has a GED, and previously worked for print shops. Her duties included laying out the Pennsylvania Yellow Pages in preparation for final printing and managing a print shop. She testified that she has multiple physical problems, including arthritis of the spine, scoliosis, a displaced hip, and hyper thyroid disease.

At the hearing held on September 13, 2005, Mother presented no medical testimony regarding her inability to work. She was given a second opportunity to present medical testimony at a hearing held on September 29, 2005, but again failed to do so, stating her physician was unavailable. She did offer a note on her physician's letterhead, but apparently the Master rejected the note because Father did not have the opportunity to cross-examine him. If such was the case, the court finds this to be an error, as 23 Pa.C.S.A. §4342(f) permits such a document to be admitted without the physician's testimony. See Miller v. Sampsell, Lycoming County #98-21,363.

The Master assigned Mother an earning capacity of \$750 per month, because

(1) She presented no medical testimony regarding her inability to work, (2) She is capable of maintaining her own home without difficulty, (3) She performs her own household cleaning and cooking, (4) She washes her family's clothing at a Laundromat, (5) She drives a vehicle, and (6) She goes grocery shopping.

It is true that in support cases individuals have the burden of establishing an inability to work, and that burden usually requires presentation of medical evidence. However, the court believes this rule is not appropriate for SSI recipients, even though the findings of the Social Security Administration regarding ability to work are not binding on the court. The court acknowledges there are probably people receiving SSI who are actually able to work. Nonetheless, we cannot ignore the fact that individuals must undergo a fairly rigorous procedure in order to be deemed eligible for SSI. That procedure requires proving to an administrative law judge that an individual has a serious mental or physical disability which prevents them from doing any substantial gainful work.¹ Such proof necessarily requires strong evidence from a physician or a psychiatrist. The finding of the administrative law judge may be appealed to the Social Security Administration Appeals Council, and then to federal court. The reliability of this process is, presumably, a reason SSI is excluded from income calculation under the Support Guidelines, Rule 1910.16-2(b)(1).

Although we appreciate the Master's position that SSI recipients such as Mother should bear some financial burden for the support of their children, unfortunately that is not always realistic. There are some individuals who simply cannot obtain and hold a full-time job, or even a part-time job. Assessing such non-custodial individuals with a child support obligation will rarely benefit the children whom the Support Guidelines are intended to assist. On the contrary, it will more often result in continual contempts, and perhaps even in incarceration for the parent. Similarly, assessing such custodial

¹ An individual is also eligible for SSI upon proof he or she has attained the age of 65 or is blind. 42 U.S.C.S. §1381 (2005).

parents with an earning capacity will ultimately harm the children because it is unrealistic to assume the custodial parent receiving SSI will ever earn the money assessed, and the children's financial needs will most likely go unmet.

For these reasons, we cannot condone assigning SSI recipients an earning capacity merely because they are able to satisfactorily perform basic duties such as cleaning their homes, driving cars, doing laundry, grocery shopping, and cooking. Simply because an individual can master such simple and routine household tasks does not mean he or she can obtain and retain a full time job. Even the most mundane jobs require a certain regularity, dependability, and ability to cope with stress that some SSI recipients are unable to sustain. Moreover, to assign SSI recipients the burden of proving their inability to work is inappropriate, as typically such individuals are not in a position to obtain live medical testimony.

Accordingly, we hold that a party who establishes SSI eligibility has introduced evidence to satisfy their burden of proving their inability to work. To justify a contrary finding, an opposing party would be required to introduce evidence such as showing a recipient is actually working for wages or by testimony from a vocational or medical expert to support the SSI recipient's ability to work. In short, the challenging party has the burden of producing evidence establishing an earning capacity for the SSI recipient. To hold otherwise would totally emasculate Rule 1910.16-2(b)(1). Therefore, in this case, Mother's income is set at zero.

The court does not believe this ruling reverses any of the policies practiced in the Domestic Relations section of the court. In fact, the Domestic Relations Conference Officers have routinely operated in this fashion at least since the inception of Rule 1910.16-2(b)(1), and probably well before that time. The court also believes that generally the Masters have also followed this unwritten policy. However, we recognize that to make this a final ruling without giving Father an opportunity to introduce evidence might be unfair to Father in this instance. Therefore, we will give Father until

December 15, 2005 to notify this court that he wishes this court to remand the case to give him an opportunity to introduce evidence regarding Mother's ability to work. If the court does not receive a letter from Father or his counsel by that date, we will consider this order to be final.

Father's other exception relates to the amount of taxes the Master deducted from his wages. The court will reject his proposal of deducting the amounts withheld from his paychecks, as such deductions often result in overpayment of taxes, which in turn results in a tax refund.² To resolve the question of tax liability, the court has used the standard computer program used by the Domestic Relations Office to calculate Father's *actual* tax liability, and the printout of that program is attached. With a weekly gross income of \$556.02, and claiming three exemptions for federal tax purposes, Father's monthly net income is \$1952.27. To that, the court will subtract \$28.91 per month for union dues and will add \$2000 per year (\$166.67 per month), for the refund he will receive from the child tax credit for two children, to arrive at a monthly income of \$2090.03.

² The court notes the Master did not include a tax refund in Father's income, although he received a federal tax refund in the amount of \$6408 for the tax year 2004.

ORDER

AND NOW, this _____ day of November, 2005, for the reasons stated in the foregoing opinion, Father's Exception #1 is granted and the remaining exceptions are denied. Mother's Exceptions are granted in respect to her income and the remaining exceptions are denied. It is further ordered that:

1. Father's child support obligation shall be \$716.00 per month.
2. Unreimbursed medical expenses shall be 100% to Father.
3. Should Father desire a remand in accordance with this opinion, he must notify this court in writing by December 15, 2005.
4. In all other respects, the Master's orders of September 14, 2005 and September 29, 2005 are affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
William Miele, Esq.
M.B.
Domestic Relations (JJ)
Family Court
Gary Weber, Esq.