

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

D.S.,	:	
Plaintiff	:	
	:	
v.	:	No. 98-20,569
	:	PACES NO. 424002354
W.M.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by Husband to the Master's order of December 8, 2004, awarding Mother child support. Husband raises two issues.

First, the Master pro-rated Father's lump sum worker's compensation settlement of \$24,000 over a twelve-month period and added it to his income for one year.

Inasmuch as Father continued to be charged child support throughout the time he was unemployed due to the injury he sustained, this assessment constitutes a "double dip."

The court also notes that Father's award was intercepted to pay off his arrears.

Therefore this exception will be granted.

Second, the Master assessed Father an additional \$2,579.20 (minus taxes) for the months when he is receiving unemployment compensation benefits. She did this because an individual on unemployment is permitted to earn up to and including 40% of his benefit rate without reducing the benefits, and because Father testified that he did not look for work while collecting unemployment.

The problem with this approach is that it ignores the reality of Father's situation. Father is a highway construction worker who works with heavy moving equipment. In Father's [off-the-record] own words, he literally "moves mountains." He works for the Teamster's Union, and has been so employed for twelve years. Because this type of construction cannot be performed during the winter months, Father experiences seasonal layoffs. In the words of Father's attorney, when the weather is good, Father

works a lot and makes good money. When the weather is bad, Father doesn't work and collects unemployment.

Although it may be said that Father *theoretically* could and should be working during his unemployment periods, it is simply unrealistic to expect Father to obtain appropriate temporary employment during the winter months, as the Master has directed. Given Father's education (high school diploma), work experience and history (heavy construction for the last twelve years), it is difficult to imagine exactly what temporary winter work Father could obtain. Moreover, the amount of support Mother receives for the child, even taking into consideration Father's seasonal unemployment, (\$442.29) is reasonable given the parties' financial situation. Therefore, the court will not assess Father an additional earning capacity.

Father's income is therefore calculated by using the income reported on his 2002 tax return, which is the most recent period before he sustained the injury: \$1774.32 per month in wages, \$125.50 per month tax refund, and \$456.73 per month unemployment (\$6448 annually reduced by taxes), for a total of \$2356.55 per month.

ORDER

AND NOW, this _____ day of February, 2005, for the reasons stated in the foregoing opinion, Father's Exceptions are granted and it is ordered as follows:

1. Father's support obligation shall be \$442.29 per month.
2. Unreimbursed medical expenses shall be: 49.92% to Father; 50.08% to Mother.
3. These amounts are effective on September 29, 2004.
4. In all other respects, the Master's order of December 8, 2004 shall continue in full force and effect.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Bradley Hillman, Esq.
D.S.
Domestic Relations (MR)
Family Court
Gary Weber, Esq.