

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CS, : NO. 90-21,663  
Petitioner : PACSES NO. 592001871  
 :  
vs. :  
 : DOMESTIC RELATIONS SECTION  
CW, :  
Respondent : Exceptions

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JW, : NO. 04-21,414  
Petitioner : PACSES NO. 409106863  
 :  
vs. :  
 : DOMESTIC RELATIONS SECTION  
CW, :  
Respondent : Exceptions

**OPINION AND ORDER**

Before the Court are Respondent's exceptions to the Family Court Order of September 2, 2005. Argument on the exceptions was heard December 7, 2005.

Respondent contends the hearing officer erred in not applying the child care tax credit reduction, in failing to require documentation of the child care expense, and in ordering total payments which constitute 58.9% of his income. These contentions of error will be addressed seriatim.

With respect to the child care tax credit reduction, since Petitioner W's earning capacity is \$14,040 per year gross, she would be entitled to a child care tax credit of \$378.00.<sup>1</sup> Pa.R.C.P. Rule 1910.16-6(a)(1). The rule requires the Court to apply the credit as a deduction of the expense "whether or not the credit is actually claimed". *Id.* Petitioner's counsel argues

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<sup>1</sup> Petitioner W was assessed an earning capacity of \$6.75 per hour. 40 hours per week and 52 weeks per year results in an annual capacity of \$14,040.00. Deducting the standard deduction for head of household and one exemption (the child's exemption has been awarded to Respondent), Petitioner W would have a taxable income of \$3,790, resulting in federal tax of \$378.00. The credit is the lesser of the tax or, in this instance, 35% of the expense (\$2600), which is \$910.00. Therefore, the credit is \$378.00.

nevertheless that it should not be deducted because Petitioner does not actually earn in accordance with her earning capacity and thus her actual reported income, upon which she pays federal tax, is such that she does not need the credit and thus does not claim it, referring the Court to subsection (2) of section (a) of the rule, which provides the credit not be used to reduce the expense “if the custodial parent is not qualified to receive the credit.” Pa.R.C.P. Rule 1910-16.6(a)(2). Petitioner’s counsel would thus have the Court interpret “not qualified” as meaning under the federal tax law, but the Court believes the overall scheme of the guidelines, which includes assessment of earning capacities where appropriate, envisions extension of all the benefits of such assessments, including tax credits. Therefore, since Petitioner would be qualified for the credit if she worked up to her capacity, deduction of such from the expense is determined appropriate. Allocating the remaining expense of \$2222 results in an award of child care contribution from Respondent of \$114.90 per month.

With respect to the issue of documentation, it appears Petitioner did have documentation, and produced a copy of such which shows it had been provided to the Domestic Relations Office. It is not possible to tell whether such was actually introduced into evidence at the hearing in Family Court, but it seems it would be placing form over substance to vacate the child care contribution at this point, where Respondent does not contend the expense is not legitimate. This exception will therefore be denied.

Finally, with respect to Respondent’s contention the total Order takes 58.9% of his income, it is initially noted that with the adjustment in the child care contribution, that figure is lowered to 57.8% but in any event, even with the adjustment, Respondent is left with only \$703.11 per month. While this amount exceeds the guideline recommendation of \$550.00 per month, the Court believes an adjustment of the arrearage payments to \$15.00 in each case is appropriate under the circumstances.<sup>2</sup>

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<sup>2</sup> It is noted that effective in January 2006, the guideline changes suggest that Respondent be left with \$750.00 per month.

**ORDER**

AND NOW, this 7<sup>th</sup> day of December 2005, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. The Order of September 2, 2005, shall be modified to provide for a child care contribution of \$114.90 per month effective July 29, 2005. Further, the arrearage payment in each case shall be modified to \$15.00 per month at the time of the next billing.

As modified herein, the Order of September 2, 2005, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations Section  
CS, 725 E. Picasso Circle, Defuniak Springs, FL 32433  
Janice Yaw, Esq.  
William Miele, Esq.  
Gary Weber, Esq.  
Dana Jacques, Esq.  
Hon. Dudley Anderson