

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

S.M.E.,	:	
Petitioner/Plaintiff	:	
	:	
v.	:	No. 00-20,131
	:	PACSES No. 588102186
R.W.H., JR.,	:	DOMESTIC RELATIONS SECTION
Respondent/Defendant	:	

OPINION AND ORDER

Before this Honorable Court, is the Petitioner/Plaintiff's March 29, 2006 Exceptions filed to the Family Court Hearing Officer's March 20, 2006 Order. The Petitioner/Plaintiff asserts that the Family Court Hearing Officer erred when she assessed her a \$25,000/year earning capacity instead of utilizing her actual hourly earnings to calculate child support. For the following reasons, the Court agrees with the Master's assessment.

At the March 16, 2006 hearing in this matter, the Petitioner/Plaintiff testified that, as a self-described clerical employee, she earns \$6.00/hour and only works part-time. Additionally, she testified that although she maintains a license to sell insurance, she has only sold a few insurance policies (to herself and family members) and that her employer required her to obtain the aforementioned license to sell insurance so that she would be better able to assist possible clients on the telephone. The Petitioner/Plaintiff also testified that she has never attempted to find full time employment and/or employment in which she could utilize her license to sell insurance.

Pennsylvania Rules of Civil Procedure No. 1910.16-2(d)(4) states that, "a party who willfully fails to obtain appropriate employment will be considered to have an income equal to the party's earning capacity." "A person's earning capacity is defined not as an amount which the

person could theoretically earn, but as that amount which the person could realistically earn under the circumstances, considering his or her age, health, mental and physical condition and training.” *Strawn v. Strawn*, 444 Pa. Super. 390, 395, 664 A.2d 129, 132 (Pa. Super. Ct. 1995); *Myers v. Myers*, 405 Pa. Super. 290, 297, 592 A.2d 339, 342 (Pa. Super. Ct. 1991). Accordingly, the Master, based on, *inter alia*, the Petitioner/Plaintiff’s experience in the industry and her possession of a license to sell insurance, assessed her an earning capacity commiserate with entry level insurance agents in Lycoming County.

ORDER

AND NOW, this _____ day of August 2006, for the reasons set forth above, it is **ORDERED** and **DIRECTED** that the Exceptions filed by the Petitioner/Plaintiff to the Family Court’s Order of March 20, 2006 are **DISMISSED**.

By the Court,

Nancy L. Butts, Judge

cc: Randi W. Dincher, Esq.
 Christina L. Dinges, Esq.
 Family Court
 Domestic Relations (JS)
 Gary L. Weber, Esq.