

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

D.L.S.,	:	
Plaintiff	:	
	:	
v.	:	No. 07-20,469
	:	
E.C.S., Jr.,	:	
Defendant	:	

OPINION

This opinion addresses both parties' exceptions to the Master's order of April 12, 2007. There are two primary areas of dispute. The first area is whether Wife should be assessed an earning capacity beyond the \$437.00 per month she receives in Social Security Disability. The second area is how to treat the \$450 per month Wife receives from the Joinder Board as an adoption stipend.

Regarding Wife's earning capacity, the evidence established that Wife began receiving SSD in October 2006, as a result of severe tendonitis. Wife testified,

I worked and got severe tendonitis in both elbows and I worked—they were—they went up stiff on me and I had to go into therapy for six and a half months at the Winner Building and they got to the place where they couldn't get them any better than they are.

N.T. p. 19. Wife testified that her recent work history consisted of merchandising in 2001-2003, although she was uncertain of the dates. Wife further testified she tried working in December 2006 through January 2007, tending bar for one or two days a week, five hours per day. She quit because of the pain in her elbows.

Husband testified that Wife worked after January 2007, but did not deny she complained of pain in her elbows. Although the Master did not make specific findings of credibility, it appears she found Wife's testimony credible. Moreover, when Husband was asked whether he believed Wife was disabled, he responded, "Boy, that's a tough call there," and never ultimately stated she was disabled or not.

This court has previously addressed how to handle earning capacity for recipients of supplemental security income (SSI) in Bellitto v. Algarin, Lyc. Co. No. 93-20,727. In that case we found 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.

Opinion, p. 3. As the procedure for Social Security Disability qualification is no less rigorous than SSI qualification, we extend this holding to SSD cases.

The opinion of the Hon. Judge Butts, Gordner v. Gordner, Lyc. No. 02-20,367, is consistent with this holding, and also with Bellitto. In Gordner, the wife received SSD. At the hearing, Wife offered the testimony of two medical doctors and one psychologist stating she was incapable of acquiring and maintaining gainful employment. In rebuttal, the husband offered the testimony of Eileen Bloom, a physical therapist who specializes in industrial rehabilitation, and video tapes of wife's activities filmed by a private investigator. The tapes showed the wife primarily at her river lot, acting and moving beyond the limitations she claimed to suffer that entitled her to disabled status. After viewing the videotapes, the two medical doctors revised their opinions regarding the wife's ability to work, and concluded that the only obstacle to wife's working was her current choice of pain management. Additional testimony was presented regarding alternative medications and/or alternatives to medication that the wife had not explored or had refused to explore. Judge Butts therefore assessed wife a minimum wage earning capacity, in addition to her SSD income.

In this case, however, Husband has not offered any convincing evidence to support Wife's ability to work. Therefore, the court will deny his exception.

Regarding the monthly adoption stipend from the Lycoming County Joinder Board, the Master treated it as a derivative benefit received by a child as a result of a

parent's retirement, death, or disability, under Rule 1910.16-2 (b)(2). The court finds no reason to overrule the Master on this issue, as the adoption stipend is also a government payment for the benefit of the children. However, the amount of the payment was apparently miscalculated by the Master. On page 2 of the report, the Master states that Wesley's payment was raised from \$200 to \$350 on April 13, 2007. The court could find no evidence of this increase, either from the transcript or from the exhibits. Wife clearly testified that she receives \$200 for Wesley and \$250 for Alicia. She further testified that on July 4, 2007, when Alicia attains the age of eighteen, she will no longer receive Alicia's stipend. And finally, she testified that the amounts of the stipends for each child have never changed, and will not change. N.T. pp. 22-23. The court has questioned both attorneys as well as the domestic relations officer, and cannot locate any evidence that Wesley's stipend was increased to \$350 per month. Therefore, the court will recalculate the amounts of support. If either party can produce documentation of the alleged increase for Wesley, he or she may present it to the Domestic Relations Officer, who may change it administratively, retroactive to the actual date the payment was increased.

The remaining exceptions are dismissed.

ORDER

AND NOW, this _____ day of July, 2007, for the reasons stated in the foregoing opinion, Husband's exceptions are dismissed. Wife's exception number six is granted and Wife's remaining exceptions are dismissed. It is further ordered as follows:

1. The tier of April 12, 2007 through July 3, 2007 is eliminated, and amounts shall remain the same as March 14, 2007 through April 11, 2007.
2. Beginning on July 4, 2007 and continuing until further order of court, the calculations shall include an adoption stipend of \$200 for Wesley. Amounts shall be as follows:
 - (1) Child support shall be \$593.61 per month, minus Wife's health insurance obligation of \$6.12 per month, for a total of \$587.49 per month.
 - (2) APL shall be \$767.57 per month.
 - (3) Mortgage contribution shall be \$129.23 per month.
3. In all other respects, the Master's order of April 12, 2007 is affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Christina Dinges, Esq.
Rebecca Rhinehart, Esq.
Domestic Relations Office (SF)
Family Court
Gary Weber, Esq.