

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JW,		: NO. 06 – 21,684
	Petitioner	: PACSES NO. 711108850
		:
	vs.	:
		: DOMESTIC RELATIONS SECTION
BNB,		:
	Respondent	: Exceptions

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order of February 15, 2008. Argument on the exceptions was heard April 1, 2008.

Petitioner claims the hearing officer erred in awarding the federal income tax exemption for the parties' child to Respondent, arguing it should not have been awarded to him at all, and in any event, not for future years and not contingent upon his continued payment of support and arrears. With respect to the latter issues, as is indicated in the Order of February 15, 2008, the award for future years is modifiable upon a showing of changed circumstances, and the contingency language simply refers to one of the circumstances which could be considered if a review were indeed requested. In other words, if Respondent does not maintain his support payments, Petitioner is within her rights to ask that she be awarded the exemption for the upcoming tax year(s).

With respect to the award of the exemption itself, as such is permitted by Pa. R.C.P. 1910.16-2(f), and as the hearing officer determined that an award to Respondent would maximize the income available to the parties and child, the Court finds no error in the award to Respondent. The hearing officer did not, however, recalculate Respondent's support obligation to consider his increased tax refund and the Court will do so as Rule 1910.16-2(f) requires the tax consequences of the award be considered in calculating a party's obligation for support.

For the period from January 1, 2008,¹ through January 28, 2008, based upon Petitioner's earning capacity of \$1473 per month² and Respondent's income of \$2253 per month,³ Respondent has an obligation for the support of one minor child of \$491.02 per month, less Petitioner's obligation for health insurance of \$41.77 per month. For the period of January 29, 2008, through June 30, 2008, considering Petitioner's earning capacity of zero⁴ and Respondent's income of \$2036 per month,⁵ his obligation will be modified to \$509 per month. Effective July 1, 2008 (unless the current Administrative Order, which is to expire June 30, is extended), considering Petitioner's earning capacity of \$1473 per month and Respondent's income of \$2036 per month, Respondent has an obligation for the support of one minor child of \$458.36 per month, less Petitioner's obligation for health insurance of \$44.36 per month.

ORDER

AND NOW, this 2nd day of April 2008, for the foregoing reasons, Petitioner's exceptions are hereby DENIED. The Orders of February 15, 2008, and March 3, 2008, are modified, however, as follows:

1. Effective January 1, 2008 through January 28, 2008, Respondent's obligation shall be modified to \$449.25 per month. Respondent's liability for excess unreimbursed medical expenses during this time shall be 60.47%.
2. Effective January 29, 2008, through June 30, 2008, Respondent's obligation shall be modified to \$509.00 per month. Respondent's liability for excess unreimbursed medical expenses during this time shall be 100%.

¹ The refund is averaged over the twelve months of 2008 as refunds are annual events.

² This earning capacity was assessed in the Order of April 10, 2007. Petitioner's refund is not considered as the earning capacity already accounts for the actual tax liability.

³ Respondent's income consists of \$1801 per month from his primary employment, \$217 per month from part-time employment and \$235 per month from the tax refund ($\$2827/12 = \235). The employment figures are taken from the April 10, 2007, Order.

⁴ This earning capacity was assessed in an Administrative Order dated March 3, 2008, based on a medical verification of Petitioner's inability to work.

⁵ Respondent's income consists of \$1801 per month from his primary employment and \$235 per month from the tax refund; it is noted in the Administrative Order referenced above that Respondent no longer has income from part-time employment.

3. Effective July 1, 2008 (unless the current Administrative Order, which is to expire June 30, is extended), Respondent's obligation shall be modified to \$414.00 per month and his liability for excess unreimbursed medical expenses shall be 58.02%.

As modified herein, the Order of February 15, 2008, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations Section
John Felix, Esq.
Joy McCoy, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson