

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>PC</b>		:	
	<b>Plaintiff</b>	:	<b>DOMESTIC RELATIONS</b>
		:	<b>NO. 11-20,097</b>
<b>vs.</b>		:	<b>PACSES CASE NO. 855112270</b>
		:	
<b>AC</b>		:	
	<b>Defendant</b>	:	

**DATED:      MAY 17, 2011**

**ORDER**

Before this Court are Wife's Exceptions filed on March 8, 2011 and Amended Exceptions filed on March 25, 2011, to the Family Court Order of February 28, 2011, as well as Husband's Exceptions filed on March 10, 2011 and Amended Exceptions filed March 15, 2011, to the Family Court Order of February 28, 2011. Argument on the Exceptions was heard on March 25, 2011.

In the Order of February 28, 2011, the Master determined that based upon Wife's income and Husband's earning capacity plus retirement income, that Wife owed to Husband Alimony Pendente Lite in the amount of \$937.53 per month. The Master granted a 25% deviation in the support based upon the marital debt that Wife pays reducing the Alimony Pendente Lite award to \$703.15 per month. The Master granted Wife's request for a mortgage deviation of \$92.97 per month. The Master ordered each party to pay their proportionate share of the health insurance which Husband provides for himself and Wife. Lastly, the Master granted a 25% deviation on Wife's medical

insurance contribution due to the Medicare insurance costs which Wife pays on her own behalf.

Husband raises the following exceptions:

1. The Hearing Officer erred in not specifying that Husband should receive credit in equitable distribution for the 25% deviation due to Wife's payment of marital obligations, or in the alternative, deny the deviation.
2. The Hearing Officer erred in requiring Husband to pay an allocated share of Wife's medical insurance.
3. The Hearing Officer incorrectly assigned Husband's earning capacity.
4. The Hearing Officer erred in not specifying that Wife would be required to continue to pay specific marital bills for which she received a deviation in support.

Wife raises the following exceptions:

1. The Family Court Hearing Officer erred in assessing the Defendant's earning capacity lower than the evidence presented at trial.
2. The Family Court Hearing Officer erred in failing to take into consideration the Defendant's lack of expenses.
3. The Family Court Hearing Officer erred in failing to take taxes out of Plaintiff's monthly Social Security Disability Income which is taxable.
4. The Family Court Hearing Officer erred in assigning to Wife an APL payment inconsistent with her ability to pay contrary to 23 Pa.C.S. §4322.
5. The Family Court Hearing Officer erred in failing to grant a deviation higher than 25% for Plaintiff's payment of the parties' debts and should have granted a

deviation in excess of 25% in order to effect an APL payment that Plaintiff would be able to pay in addition to the parties' large marital debt.

6. The Family Court Hearing Officer erred in calculating Plaintiff's minimum payments on the parties' debts at \$870, when the testimony offered established that her minimum payments on those debts were actually higher.

The primary exception filed by both Husband and Wife centers around the Master's reduction of Wife's Alimony payment to Husband by 25% for Wife's payment of marital debt (Husband's Exceptions 1 and 4; Wife's Exceptions 5 and 6).

In addition, both Husband and Wife filed Exceptions regarding the earning capacity assigned to Husband (Husband's Exception 3; Wife's Exception 1).

Wife also alleges that the Master erred in assigning Alimony Pendente Lite inconsistent with Husband's need and Wife's ability to pay (Wife's Exceptions 2 and 4), and in failing to take taxes out of Wife's monthly Social Security Disability (Wife's Exception 3).

Husband also alleges that the Master erred in requiring him to pay an allocated share of Wife's medical insurance (Husband's Exception 2).

This Court will address the aforementioned issues (this Court's reorganizing of Husband and Wife's respective exceptions) in the order in which they appear above.

#### **I. Reduction of Wife's Alimony payment by 25% for Payment of Marital Debt**

The primary exception filed by both Husband and Wife centers around the Master's reduction of Wife's Alimony payment to Husband by 25% for Wife's payment of marital debt. The guidelines themselves determine Wife's ability to pay and deviation

from the guidelines must be based on the factors set forth in Rule 1910.16-5. If the Master determines that deviation is warranted, such deviation must be based upon the following factors: “(1) unusual needs and unusual fixed obligations; (2) other support obligations of the parties; (3) other income in the household; (4) ages of the children; (5) the relative assets and liabilities of the parties; (6) medical expenses not covered by insurance; (7) standard of living of the parties and their children; (8) in a spousal support or alimony pendente lite case, the duration of the marriage from the date of the marriage to the date of separation; and (9) other relevant and appropriate factors, including the best interests of the child or children.” Pennsylvania Rule of Civil Procedure 1910.16-5(b).

Deviation from the guidelines must be based upon and pursuant to Pa.R.C.P. 1910.16-5, and the presumptive minimum amount that Wife owes to Husband under the guidelines cannot be rebutted by Wife’s payment of marital debt. See *Terpak v. Terpak*, 697 A.2d 1006, 1010 (Pa. Super. 1997). The voluntary incurrence of debt does not reduce the obligation of support owed to a spouse. *Id.* at 1009. If Wife is deserving of relief, a request for such would be more appropriate in a Petition for Special Relief requesting an allocation of the marital debt between the parties pending equitable distribution. Thus, this Court finds that the Master did error in reducing Wife’s Alimony payment to Husband by 25% for the Wife’s payment of marital debt.

## **II. Husband’s Earning Capacity**

The Master assessed Husband with an earning capacity of \$10.00 per hour. The Master provided a detailed analysis as to how she arrived at the earning capacity of

\$10.00. The Court cannot find that the Master erred in her determination, as her determination is supported by the evidence presented.

### **III. Husband's Need and Wife's Ability to Pay**

Wife also alleges that the Master erred in assigning Alimony Pendente Lite inconsistent with Husband's need and Wife's ability to pay. Specifically, Wife alleges that the Master erred in failing to take into consideration the lack of Defendant's expenses and in assigning Wife an Alimony Pendente Lite payment inconsistent with her ability to pay.

It is well settled in Pennsylvania, and this County has continually recognized that a spouse's need for APL need not be shown in order for an award of APL to be appropriate.

As the Pennsylvania Superior Court stated in Terpak v. Terpak, 697 A.2d 1006 (Pa. Super. 1997), a court may not deviate from the guidelines on the ground that the child or spouse does not need the amount of money suggested by the guidelines. The trier of fact need not, and should not, consider in the first instance the actual expenses of the parties to determine the child's or spouse's reasonable needs. Instead, the court must assume initially that the guideline amount constitutes the amount necessary to meet the reasonable needs of the child or spouse. The court may then deviate from the guideline amount based upon the factors set forth in Rule 1910.16-5.

*Voneida v. Voneida*, opinion and order of The Honorable Judge Richard A. Gray's, March 10, 2004, No. 03-20, 439. In light of the well-settled case law, the Court cannot find that the Master erred in failing to consider Husband's actual need or Wife's ability to pay.

#### **IV. Taxes on Wife's Social Security Disability**

Wife alleges that the Master erred in failing to take taxes out of Wife's monthly Social Security Disability. The Master found that Wife receives Social Security Disability in the amount of \$13,252.80 per year or \$1,104.40 per month. The Master further found that it was doubtful Wife would have to pay taxes on her Social Security Disability. Review of the transcript shows that no evidence was presented by Wife to indicate that she will have a tax obligation in regard to her SSD benefits. As there was no evidence presented to the contrary, the Court cannot find that that Master erred in determining that Wife will not have a tax obligation which would reduce her SSD benefits for purposes of the APL calculation.

#### **V. Husband's Payment of an Allocated Share of Wife's Medical Insurance**

Husband alleges that the Master erred in requiring him to pay an allocated share of Wife's medical insurance. Husband provides health insurance for himself and Wife at a cost of \$197.07. This insurance is available to Husband as part of his retirement benefits from the Post Office. The Master ordered Wife to pay to Husband her proportionate share of the insurance. Neither party disputes this ruling. Wife also has Medicare insurance at a cost of \$96.40 per month. In light of Wife's medical needs, the Court finds this expense to be reasonable and necessary. The Master determined that Rule 1910.16-6(b)(1) does not permit the Court to require Husband to contribute to the cost of Medicare and further determined that the cost of Medicare cannot be reduced from Wife's income. The Court agrees with the Master. Because the Master found this result to be inequitable, she reduced Wife's proportionate contribution to Husband's

medical insurance cost by 25%. The Court finds that this was in error. Rule 1910.16-5 allows a deviation from the amount of support, not a percentage reduction in contribution to medical insurance costs. Wife clearly is in need of the additional Medicare insurance in light of her significant medical needs. The Court, therefore, finds that the cost of Wife's Medicare insurance is an unusual need and therefore, her APL obligation to Husband will be reduced by 10% pursuant to Pa.R.C.P. 1910.16-5(b)(1).

#### **VI. Recalculation of Support**

Alimony Pendente Lite is calculated by subtracting Husband's income of \$1,775.57 from Wife's income of \$4,119.40 and awarding 40% of the difference yielding Alimony Pendente Lite of \$937.53. Wife shall receive a 10% reduction in her APL obligation as a result of her Medicare expense which results in a reduction of \$93.75, which brings the Alimony Pendente Lite payment to \$843.78.

The mortgage, taxes and insurance on the residence paid by Wife are \$1,040.00 per month. Wife's income, after the Alimony Pendente Lite of \$843.78 is \$3,275.62. One-quarter of this is \$818.90 resulting in an overage of \$221.10. Wife is granted a deviation of 50% of that overage or \$110.55.

Husband provides health insurance for himself and Wife at a cost of \$197.07 per month. Once the Alimony Pendente Lite award is deducted from Wife's income and added to Husband's income, Wife's income is 56% of the parties' combined incomes and Husband's income is 44%. Wife owes her share of the insurance of \$110.35 per month.

Accordingly, it is hereby ORDERED and DIRECTED as follows:

1. Alimony Pendente Lite

Based upon the incomes stated above, PC shall pay Alimony Pendente Lite to AC the sum of \$843.78 monthly, minus a mortgage deviation of \$110.55 per month, plus a health insurance contribution of \$110.35 per month, for total Alimony Pendente Lite of **\$843.58** monthly effective February 7, 2011 and continuing until further order of court.

This shall be wage attached. Any advance or additional payments may be made directly by issuing a check or money order to PA SCDU, P.O. Box 69110, Harrisburg, PA 17106-9110. The check or money order shall contain Defendant's social security number.

2. Arrearages

PC shall pay \$85.00 monthly on this order for any past due support because of the retroactive effect of this order and for any overdue support which has accrued prior to the entry of this order.

3. Balance to be paid by defendant

PC shall be responsible for the payment of any balance remaining if the employer is unable to deduct the total amount of support pursuant to this order within fourteen days of the reduced payment to PA SCDU.

4. Unreimbursed Medical

Beginning February 7, 2011, Husband shall be responsible for the first \$250 of unreimbursed medical expenses incurred for himself during the calendar year. Medical expenses do not include over-the-counter medications.



Once this \$250 threshold has been met, Wife shall be responsible for 56% and Husband shall be responsible for 44% of all reasonably necessary medical services and supplies including, but not limited to, surgical, dental, optic, and orthodontic services incurred on behalf of Husband, which are unreimbursed by insurance or Medicaid within thirty days of proof of such paid expenses presented by Husband to Wife.

Unreimbursed medical, dental, optic, and orthodontic expenses shall be determined after submission to both parties' insurance companies, if any, with documentation of payments or denial of payment to be presented to the Domestic Relations Office.

5. Continue to Obtain Medical Insurance

AC shall continue to obtain medical insurance coverage for Wife.

6. New Case

PC shall pay court costs in the amount of \$52.00 to the Lycoming County Domestic Relations Office within thirty days of the date of this order.

7. Continuing Obligation

As long as the Domestic Relations Office has administrative responsibility, all parties are under a continuing obligation to report any material change in circumstances relevant to the level of support or the administration of the support order as specified on the Addendum to this order, to both the Domestic Relations Office and all other parties in writing, within seven days of the change.

The provisions of the Addendum (form 3795), which is attached hereto, is made a part hereof and incorporated by reference as though set forth herein.

8. Credit

PC shall receive credit in the amount of **\$500.00** per the agreement of the parties set forth in the order of February 14, 2011.

By the Court,

Joy Reynolds McCoy, Judge