

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

|     |            |                              |
|-----|------------|------------------------------|
| JR, |            | : NO. 94 – 21,616            |
|     | Petitioner | : PACSES NO. 432100307       |
|     |            | :                            |
|     | vs.        | :                            |
|     |            | : DOMESTIC RELATIONS SECTION |
| JR, |            | :                            |
|     | Respondent | : Exceptions                 |

**OPINION AND ORDER**

Before the Court are Respondent’s exceptions to the Family Court Order of May 31, 2011. Argument on the exceptions was heard September 6, 2011

In his exceptions, Respondent contends the hearing officer erred in assessing him a minimum wage earning capacity, in the determination of his income prior to the assessment of an earning capacity, in failing to include certain items of income in Petitioner’s total income, and in requiring him to contribute to the child’s health insurance expense. These issues will be addressed seriatim.

First, with respect to Respondent’s earning capacity, Respondent contends he is unable to perform physical work and unable to maintain any employment because of the number of medical appointments he attends. Respondent presented the testimony of a physician’s assistant employed by the Veteran’s Administration, where Respondent had been seen for various conditions. The Physician’s Assistant would not opine that Respondent was unable to work in any position and Respondent provided no other medical testimony to that effect. The Court therefore finds no error in the hearing officer’s finding that Respondent is able to perform non-physical work. As far as the number of medical appointments, a review of Respondent’s testimony indicates that such are not unusually numerous such as would significantly interfere with the ability to maintain employment. Therefore, the Court will not disturb the hearing officer’s assessment of an earning capacity,

Next, with respect to the determination of his income, Respondent argues that the hearing officer should have found that he had a monthly VA disability payment of \$541 until January 1, 2011, and \$644 thereafter, rather than \$644 for the entire period. A review of the evidence shows, however, that the document submitted at the hearing indicated that the last change to the amount was July 14, 2010, and showed the amount at \$644. Thus, although Respondent might have received \$541 at some time prior to July 14, 2010, it appears the hearing officer correctly found the monthly amount to be \$644 as of September 30, 2010, the date of Petitioner's request.

Next, with respect to Petitioner's income, Respondent contends the hearing officer should have included \$200 per month she receives from the parties' child as rent, and the amount she receives from him toward the monthly cable bill. He also alleges that the hearing officer "erred in failing to utilize Joni Ritter's 2010 Federal income tax return in determining her net monthly income." Since there was nothing to indicate that Petitioner made a profit because of the rent and cable payments, that is, that the expenses were less than the payments, the Court finds no error in their non-inclusion. With respect to the tax return, the hearing officer did consider the return and in fact included Petitioner's refund in her calculation. The Court therefore does not find error in this regard either.

Finally, with respect to the health insurance, Respondent's allegation of error is based on his assertion that he also provides health insurance for the child. The evidence showed that he had never communicated that fact to Petitioner, however. In light of that, the contribution required by the hearing officer is considered proper.

Accordingly, as none of Respondent's allegations of error has merit, the Court enters the following:

**ORDER**

AND NOW, this 7<sup>th</sup> day of September 2011, for the foregoing reasons, Respondent's exceptions are hereby DENIED. The Order of May 31, 2011, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations Section (MR)  
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Hon. Dudley Anderson