

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
DOMESTIC RELATIONS

RHONDA L. EASTERLY,	:	
Plaintiff	:	CASE NO. 290DR98
	:	
vs.	:	
	:	
SCOTT A. EASTERLY,	:	PACSES NO. 719100323
Defendant	:	

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REBECCA L. GREEN,	:	
Plaintiff	:	CASE NO. 41DR06
	:	
vs.	:	
	:	
SCOTT A. EASTERLY,	:	PACSES NO. 613108040
Defendant	:	

Jean A. Engler, Esquire	Counsel for Plaintiff
Joseph V. Sebelin, Jr., Esquire	Counsel for Defendant

Matika, J. - August 16<sup>th</sup>, 2012

MEMORANDUM OPINION

This matter comes before us by way of Exceptions filed by Defendant Scott A. Easterly (hereinafter "Father"). Basically, Father claims that the Hearing Officer abused his discretion or in the alternative erred as a matter of law in the manner in which he utilized Father's lump sum Worker's Compensation award in fashioning a child support obligation. For the reasons stated herein, we will deny Father's Exceptions, however, we *sua sponte* modified Father's support obligations.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Father has two support cases involving two different children. In the case indexed to 41DR06, Father filed a Petition to Modify on February 8, 2012. In the case docketed to 290DR98, Father filed a Petition for Modification on January 2, 2012. Both cases were eventually scheduled for hearing before the Hearing Officer. On April 12, 2012, a hearing was held before William G. Schwab, Esquire.

Testimony elicited from the Father included the fact that he was previously employed as a deliveryman for Country Junction and he received a net lump sum Worker's Compensation settlement in the amount of \$73,000.00, \$10,000.00 of which was used to purchase an annuity that provided an annual payment of \$1,119.22. Father further testified that he was in the process of applying for Social Security Disability as well as obtaining his G.E.D. Certificate.

As a result of the testimony presented, the Hearing Officer found that "assuming it will take three years to prosecute the Defendant's social security claim, the Domestic Relations Hearing Officer has amortized the Defendant's lump sum over three years and has attributed \$21,000.00 per year to his income available for support." Based on this finding, the Hearing Officer concluded that the Father was obligated to support each child to the sum of \$500.00 per month per case. The Hearing

Officer also concluded that the Father had a monthly net income of \$2,728.83.

After the hearing, Father filed timely Exceptions, objecting to the manner in which the Hearing Officer allocated the lump sum Worker's Compensation award and thereafter excepted to the determination of the monthly support amount. These issues are now ripe for our disposition.

#### **LEGAL DISCUSSION**

Clearly, lump sum awards are considered income for purposes of child support determinations. *Witherow v. Witherow*, 432 A.2d 634 (Pa. Commw. Ct. 1981). The more difficult issue is how to allocate it to fairly and appropriately allow for the ordering of child support.

Father argues that the Hearing Officer erred in three (3) ways by allocating the award over three years. First, Father argues that the three (3) year allocation was based on speculation insofar as the Hearing Officer "assumed" it would take three years to prosecute the disability claim. Secondly, Father argues that the Hearing Officer did not employ a full analysis of the parties' income, property interests, and financial resources. Lastly, Father argues that what the Hearing Officer should have done was to allocate the Worker's Compensation award over a period of time encompassing the

balance of the subject child's majority, taking into consideration that the award covered a 462-month period of disability.

We first point out that the Hearing Officer is afforded discretion in passing on issues such as those before us. In doing so, the Hearing Officer may utilize certain methods or calculations in reaching his findings and conclusions. Absent some showing by Father that the methods utilized were erroneous, those calculations will be upheld. *Dugery v. Dugery*, 419 A.2d 90 (Pa. Super. 1980). Based on the record, it is obvious to the Court that Father has limited financial resources beyond the Worker's Compensation award and the annual annuity payment of \$1,119.22. Further, as the Hearing Officer found, Father was in the process of obtaining his G.E.D. Certificate while at the same time applying for Social Security Disability. We believe the Hearing Officer appropriately considered Father's income assets, financial resources, unemployment status, and education in reaching his conclusion on how to allocate the Worker's Compensation award. Nothing argued by Father proves this method to be erroneous. We further agree that a three year allocation of the \$63,000.00 balance over three years is fair and just and not confiscatory or unreasonable considering that the end result of a net income of \$21,000.00 is less than what Father made as a deliveryman. Additionally, the Hearing Officer's "assumption"

that it would take three years to prosecute a disability claim is favorable to Father insofar as it appears unlikely that it should take that long. The Hearing Officer would have been well within his discretion to be "less generous" in that assumption, thereby allocating those monies over a shorter period of time and creating a larger net monthly income to Father. It is also worth noting that should Father have simply chosen not to settle his Worker's Compensation claim as he did, he would be receiving \$418.00 a week net, which equates to \$1,810.00 per month, eerily similar to the net income we find herein.

Father also suggests that the \$63,000.00 should be allocated based on the duration of the agreement, specifically over a period of 462 months of disability, and then only consider that portion which covers (presumably) the younger child's period of minority. The Court is reluctant to follow this line of thinking for several reasons. First, there is no rational relationship between the amount of the lump sum award and the duration of the younger child's remaining minority. Secondly, even if there was such a rational relationship it would be patently unfair to the older child whose period of remaining minority time is significantly less. Under this theory, it would make more sense that any proration as suggested by the Father be done utilizing the older child's remaining time under the age of 18, which ironically is approximately three (3)

years. It should also be pointed out that the reference to 462 months as identified in Father's exhibit from the hearing, deals with the Father's life expectancy according to "Social Security Online Period Life Tables, Life Table 2006." It is further explained that the Worker's Compensation benefit in the amount of \$158.01 per month was for the purpose of a Social Security offset, not as Father's actual earnings or income.

It is unconscionable to allocate the lump sum payable at the rate of \$158.01 per month when Father, prior to the Worker's Compensation settlement was receiving benefits at the rate of \$418.00 per week.

In exercising his discretion, the Hearing Officer would have been within his authority to prorate the \$63,000.00 amount over a one (1) year period consistent with *Darby v. Darby*, 686 A.2d 1346 (Pa. Super. 1996), however, it appears the Hearing Officer took other factors into consideration in prorating this award over three years for the reasons explained earlier.

Accordingly, we believe Father's exceptions in both cases regarding the allocation on the Worker's Compensation award over three (3) years are without merit and will be denied and dismissed. However, our analysis of the child support calculations does not end there.

Prorating Father's \$63,000.00 net award over three (3) years results in a \$21,000.00 annual net income or \$1,750.00 per

month. Additionally, Father receives a one time per year check in the amount of \$1,119.22 from the \$10,000.00 annuity he purchased. It appears from the record that the Hearing Officer erred in recommending a support order based on a net monthly income of \$2,728.68. Father's net income should have been calculated as follows:

a) Lump sum allocation/month	\$1,750.00
b) Net annuity allocation/month	<u>84.00</u>
Total net monthly income	\$1,834.00

We find this error glaring, yet unintentional, one easily overlooked by the Hearing Officer and attorneys alike, but one which cries out for a *sua sponte* correction. Thus, we find Father's net monthly income to be \$1,834.00. Accordingly, taking into consideration the Plaintiffs' respective incomes in both cases we order the following:

- a) In 290DR98, PACSES #719100323, the Defendant, Scott A. Easterly, shall have a basic child support obligation of \$396.02 per month. Further, uncompensated medical bills over \$250.00 per year shall be split 46.7% payable by Defendant and 53.3% payable by Plaintiff; and
- b) In 41DR06, PACSES #613108040, the Defendant, Scott A. Easterly, shall have a basic child support obligation of \$389.77 per month. Further,

uncompensated medical bills over \$250.00 per year shall be split 45.64% payable by Defendant and 54.36% payable by Plaintiff.

BY THE COURT:

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Joseph J. Matika, Judge