

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

TERESA ACHTERMANN,	:	
	:	
Plaintiff	:	
	:	
v.	:	No. 295 DR 07
	:	PACSES No. 990109558
LEWIS ACHTERMANN,	:	
	:	
Defendant	:	

MEMORANDUM OPINION

Serfass, J. - November 9, 2012

Here before the Court are Plaintiff's Exceptions to the Domestic Relations Hearing Officer's Report dated May 25, 2012. For the reasons that follow, Plaintiff's Exceptions are granted.

FACTUAL AND PROCEDURAL BACKGROUND

On March 5, 2012, Defendant filed a Petition for Modification of Support for three (3) minor children, Alexandra Achtermann (Date of Birth: July 5, 1995), Gabrielle Achtermann (Date of Birth: April 14, 1997) and Brandon Achtermann (Date of Birth: March 25, 1999). An Interim Order was entered on March 29, 2012, which was appealed by Plaintiff on April 17, 2012. On May 25, 2012, the Domestic Relations Hearing Officer, William G. Schwab, Esquire (hereinafter "Domestic Relations Hearing Officer"), issued a Report setting forth his Findings of Fact, Conclusions of Law and Recommendation with respect to the entry

of an order of support, pursuant to Pennsylvania Rule of Civil Procedure 1910.12(d).

Plaintiff works for Abington Memorial Hospital as a respiratory therapist where she is working an average of thirty-seven (37) hours per week earning thirty dollars and forty-three cents (\$30.43) per hour. She pays one hundred ninety-eight dollars (\$198.00) bi-weekly for health insurance for the subject children and is on intermittent family leave for one of her daughters.

Defendant receives eight hundred thirty-six dollars (\$836.00) per month in social security disability benefits. The three children receive two hundred twenty-five dollars (\$225.00) per month in social security benefits. Defendant testified that he has not held meaningful employment in several years. He last worked for nine dollars (\$9.00) per hour on a packing line in February 2012 and was let go after one (1) week. Previously, he helped out his girlfriend last fall at Lowe's and prior to that, several years ago, worked at a Wal-Mart Distribution Center for several weeks. Defendant testified that he assists his girlfriend by carrying things and doing whatever is needed in her handyman business without payment. He further testified that he pays no rent and helps out with groceries and other household expenses.

Based on the foregoing, and having found that "Defendant must be left with, as a minimum, the Self-Support Reserve after paying his support obligations, when considering the Self-Support Reserve pursuant to Pa.R.C.P. Rule 1910.16-2(e)(1)(A)", the Domestic Relations Hearing Officer determined that Defendant had no support obligation effective May 25, 2012, that the case should be zeroed out with no arrearages owing and that the case should be closed. See Domestic Relations Hearing Officer's Report, Conclusions of Law Nos. 6 and 9, (May 25, 2012).

On June 19, 2012, Plaintiff filed timely Exceptions to the Domestic Relations Hearing Officer's Report. Plaintiff argues that the Hearing Officer erred in finding that Defendant has no support obligation because said Hearing Officer failed to take into consideration that Defendant has no actual living expenses. Plaintiff filed a brief in support of her exceptions on July 19, 2012. Defendant failed to file a brief but appeared for oral argument before the undersigned on August 9, 2012.

DISCUSSION

Initially, we note that the report of the Domestic Relations Hearing Officer "is entitled to great consideration in that he has heard and seen the witnesses and...it should not be lightly disregarded...." Pasternak v. Pasternak, 204 A.2d 290, 291 (Pa. Super. 1964). "[H]owever, it is advisory only and the

reviewing court is not bound by it and it does not come to the court with any preponderate weight or authority which must be overcome." Id. "The reviewing court must consider the evidence de novo, its weight and the credibility of the witnesses." Id. "The master's report is not controlling either on the lower court or upon the appellate [c]ourt." Id. Thus, "the trial court is required to make an independent review of the report and recommendations to determine whether they are appropriate." Kohl v. Kohl, 564 A.2d 222, 224 (Pa. Super. 1989).

THE SELF SUPPORT RESERVE

Formerly designated as the "Computed Allowance Minimum" or CAM, the Self-Support Reserve (hereafter "SSR") is intended to assure that low-income obligors retain sufficient income to meet their own basic needs as well as to maintain the incentive to continue employment.

In 2010, the SSR was increased from seven hundred forty-eight dollars (\$748.00) per month to eight hundred sixty-seven dollars (\$867.00) per month, which represents the 2008 federal poverty level for one (1) person. See Pa. R.C.P. 1910.16-1, Explanatory Comment - 2010. The SSR is built into the monthly basic child support schedule set forth at Rule 1910.16-3 and adjusts the basic support obligation to prevent the obligor's net income from falling below eight hundred sixty-seven dollars (\$867.00) per month. When the obligor's net

monthly income and corresponding number of children fall into the shaded area of the schedule set forth in Rule 1910.16-3, the basic child support obligation shall be calculated using the obligor's income only. As correctly noted by the Domestic Relations Hearing Officer, pursuant to 23 Pa.C.S.A. §4302, the definition of income includes entitlements to money without regard to source, social security benefits, temporary and permanent disability benefits, worker's compensation, unemployment compensation and any form of payment due to and collectable by an individual regardless of source.

Because Defendant's monthly net income is eight hundred thirty-six dollars (\$836.00), which is thirty-one dollars (\$31.00) per month less than the SSR, the Court may award support only after consideration of his actual monthly living expenses. See Pa.R.C.P. 1910.16-3(e)(1)(C). Here, Defendant lives with his fully employed girlfriend on a rent free basis and appears to incur few, if any, household expenses. According to the schedule in Rule 1910.16-3, the monthly basic child support obligation for an obligor having three (3) children and an adjusted net monthly income less than nine hundred dollars (\$900.00) would be sixty dollars (\$60.00) per month. As previously noted, given that Defendant's monthly net income is below the SSR, the Court may award support only after consideration of said Defendant's actual living expenses.

Consistent with the goals of the SSR, the Court must insure that the overall support obligation leaves the Defendant with sufficient income to meet his basic personal needs. However, given the Defendant's circumstances in this matter, such an award may be warranted and, in fact, an upward deviation under Rule 1910.16-5(b)(3) may be considered.

Under the SSR, the support amount from the guidelines establishes a rebuttable presumption that the amount is correct. See Pa. R.C.P. 1910.16-2(e)(1)(A) and Explanatory Comment. In SSR cases, the guidelines expressly permit either a deviation from the guideline amounts (Rule 1910.16-5) or an add-on for an expense such as child care (Rule 1910.16-6). Furthermore, subsection (e)(1)(C) provides that the Court may award support upon consideration of the obligor's actual living expenses. Accordingly, the guidelines clearly provide that the amount of income to be retained by the obligor from the guideline schedule is not immutable, and the Court must individualize its analysis on a case by case basis bearing in mind the rationale underlying the SSR schedule. In certain cases, the result may be that the obligor will retain less than eight hundred sixty-seven dollars (\$867.00) per month. See Mooney v. Douth, 766 A.2d 1271, 1274 (Pa.Super 2001).

Because the determination of the Domestic Relations Hearing Officer seems to rest solely upon verification of

Defendant's monthly net income falling below the SSR, without any further analysis or consideration of said Defendant's actual living expenses, this matter will be remanded to the Domestic Relations Hearing Officer for further proceedings to consider whether an award of support is warranted based upon the Defendant's circumstances.

CONCLUSION

For the foregoing reasons, we will GRANT Plaintiff's Exceptions to the Domestic Relations Hearing Officer's Report dated May 25, 2012 and remand this matter to the Domestic Relations Hearing Officer for a determination as to whether, given Defendant's actual living expenses in this matter, an award of support for his three (3) children is warranted.

BY THE COURT:

Steven R. Serfass, J.

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	:	
Defendant	:	

ORDER OF COURT

AND NOW, to wit, this 9th day of November, 2012, upon consideration of the Plaintiff's Exceptions to the Domestic Relations Hearing Officer's Report dated May 25, 2012, the brief of Plaintiff, oral argument thereon, and after careful review of the record created before the Domestic Relations Hearing Officer, and in accordance with our Memorandum Opinion of this same date, it is hereby **ORDERED and DECREED** that Plaintiff's Exceptions are GRANTED.

IT IS FURTHER ORDERED and DECREED that this matter is REMANDED to the Domestic Relations Hearing Officer for further proceedings consistent with our Memorandum Opinion and Order of Court.

BY THE COURT:

Steven R. Serfass, J.