

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: November 27, 2013

514358

In the Matter of BROOME COUNTY
DEPARTMENT OF SOCIAL
SERVICES, on Behalf of
TEQUILLA XX.,

Respondent,

v

MEMORANDUM AND ORDER

MEAGHAN XX.,

Appellant.

Calendar Date: October 16, 2013

Before: Rose, J.P., Stein, McCarthy and Garry, JJ.

Christopher Smith, Legal Aid Society of Mid-New York, Inc.,
Binghamton, for appellant.

Mark Bice, Broome County Department of Social Services,
Binghamton, for respondent.

Garry, J.

Appeal from an order of the Family Court of Broome County
(Connerton, J.), entered March 9, 2012, which, in a proceeding
pursuant to Family Ct Act article 4, denied respondent's
objections to an order of support.

Respondent is the mother of Tequilla XX, who was born in
2011 and placed in foster care shortly after her birth.
Thereafter, petitioner commenced this proceeding seeking child
support on Tequilla's behalf. Respondent is developmentally
disabled; she receives Supplemental Security Income benefits
(hereinafter SSI) and public assistance payments in a total sum

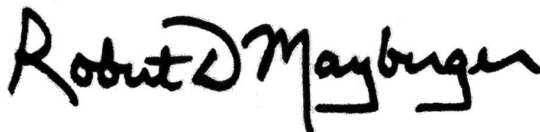
of \$961 per month, and earns some wages from part-time employment at a sheltered workshop. Her SSI payments are currently made directly to petitioner, as her representative payee. After a hearing, the Support Magistrate directed respondent to pay \$25 per month in support retroactive to the date that Tequilla became eligible for public assistance, and capped respondent's arrears at \$500. Respondent filed objections to the order, which Family Court denied. Respondent appeals, and we reverse.

The Support Magistrate's determination that respondent's average weekly income is "between \$15[] to \$20[] per week gross each and every week" is unsupported by the record, and apparently in error. Respondent's financial disclosure affidavit was the only evidence presented at the support hearing regarding her income, and it lists her biweekly gross income at \$25. Thus, after subtracting respondent's public assistance and SSI benefits (see Family Ct Act § 413 [1] [b] [5] [vii] [E], [F]; [c]), the child support award represents roughly one half of respondent's earnings. We find this award "unjust and inappropriate" (Family Ct Act § 413 [1] [f]) and, accordingly, exercise our authority upon review to grant respondent's objections and set her support obligation at \$0 (see Matter of Rose v Moody, 83 NY2d 65, 71 [1993], cert denied 511 US 1084 [1994]; Creighton v Creighton, 222 AD2d 740, 741 [1995]).

Rose, J.P., Stein and McCarthy, JJ., concur.

ORDERED that the order is reversed, on the law, without costs, respondent's objections are sustained, and her child support obligation is determined to be \$0.

ENTER:



Robert D. Mayberger
Clerk of the Court