

# **MACHON PUAH**

## **Fertility Without Ma'aser**

*Rabbi Gideon Weitzman*

Last time we saw the opinion of Rabbi Ya'akov Ariel that a man may not use ma'aser money to pay for fertility treatment but his wife is permitted to do so. The rationale behind this is that a man is obligated to procreate and one cannot use ma'aser money for a mitzva that one is obligated to perform. However a woman is not obligated to have children and therefore she would be able to use the money for this purpose.

Rabbi Zalman Nechemiah Goldberg had a different opinion. While he agrees that a man cannot use the money for ma'aser due to his halachic obligation, he is obligated to make all normative efforts to have children. In the past if a couple was married for ten years and did not have children they had to get divorced and marry other people with the hope that the second marriage would be more fruitful. However generally this is not the case today and the couple is not encouraged to divorce. As such the husband is obligated to have children but cannot fulfill the mitzva due to his circumstances. In this case he would not fulfill the mitzva at all. In fact were it not for fertility treatment he would never fulfill the mitzva. Rabbi Goldberg suggests that one cannot use ma'aser money for a mitzva that they would perform in all circumstances. But if someone would not do the mitzva at all then they can

use the ma'aser money. This is true even if in the end they fulfill their obligation.

This is an interesting distinction; one cannot use the ma'aser money and shirk their responsibility to pay for mitzvot. But if there was a mitzva that the circumstances dictated that the mitzva would not be performed then our attitude to the mitzva changes. We would encourage the person to make every effort to perform the mitzva even if they would use the ma'aser money to do so.

Rabbi Asher Weiss used the same principle regarding a couple with a financial difficulty. If they were not able to pay for treatment in any other way then he permitted their using the ma'aser money. He noted that in the case of real financial problems a person is exempt from paying ma'aser money at all. This is due to the accepted opinion that ma'aser money is a good custom but not an obligation on the same level as other mitzvot.

More next week.