

[Cite as *In re Jakubek*, 2005-Ohio-3915.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: CAITLIN JAKUBEK	:	Case No. V2001-31392
JENNIFER JAKUBEK	:	<u>ORDER OF A THREE-</u> <u>COMMISSIONER PANEL</u>
Applicant	:	
(V99-57531)	:	
	: : : : :	

{¶ 1} On December 22, 2003, the applicant filed a supplemental compensation application seeking additional allowable expense as a result of the pre - March 9, 1999 sexual abuse suffered by her minor daughter, Caitlin Jakubek. On July 20, 2004, the Attorney General granted the applicant an award in the amount of \$177.56 for counseling and mileage reimbursement. However, the Attorney General denied the applicant's claim for wage loss. On August 4, 2004, the applicant filed a request for reconsideration indicating that she sustained partial wage loss from September 1, 1999 through February 2003 when her daycare business was only open part-time. The applicant asserted that Caitlin was still at risk for acting out sexually and hence presented a danger to the other children in the daycare. On October 4, 2004, the Attorney General issued a Final Decision indicating that no modification of the previous decision was warranted and denied the claim again. On October 20, 2004, the applicant filed a notice of appeal to the Attorney General's October 4, 2004 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on April 6, 2005 at 1:35 P.M.

{¶ 2} The applicant (via telephone), applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral argument for this panel's consideration. Ms. Jakubek testified that Caitlin suffered sexual abuse prior to March 9, 1999 and subsequently underwent counseling for 4 ½ years as a result of the abuse. Ms. Jakubek stated that she was forced to close her daycare between March 9, 1999 through August 31, 1999 because of Caitlin's acting out sexually with other children. The applicant briefly described for the panel various instances of Caitlin's sexual misconduct. The applicant stated that when she closed her business in March of 1999 she had a total of six children, including Caitlin, enrolled in her daycare program. Ms. Jakubek explained that on September 1, 1999 she decided to reopen her daycare business with only three children. Ms. Jakubek testified that, based upon Caitlin's inappropriate sexual behavior toward other children, she only felt comfortable supervising three children in addition to Caitlin. However, Ms. Jakubek testified that in February 2001 enrollment into her daycare increased to five children. The applicant explained that during that time, she believed that Caitlin's behavior was improving with time, counseling, and supervision. Lastly, Ms. Jakubek stated that in February 2003 total enrollment into the daycare resumed to six, when she accepted another child into the program.

{¶ 3} Applicant's counsel stated that the applicant's claim for additional wage loss should be allowed based upon the testimony and evidence proffered. Counsel stated that the applicant is seeking reimbursement of wage loss sustained between September 1, 1999 through February 2003. Counsel argued that the applicant was unable to operate her daycare at full capacity due to the overwhelming threat of Caitlin acting out sexually against the other children.

{¶ 4} The Assistant Attorney General maintained that the applicant's claim for additional wage loss should be denied. The Assistant Attorney General argued that the applicant failed to present any new information from a counselor indicating that Caitlin was still a threat to other children in the daycare program, during the time period in question, that warranted her business only being opened part-time.

{¶ 5} Former R.C. 2743.51(F) states:

(F) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care and including replacement costs for eyeglasses and other corrective lenses. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

{¶ 6} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, this panel makes the following determination. Ms. Jakubek testified that Caitlin underwent extensive counseling for 4 ½ years after discovering that Caitlin had been sexually abused prior to March 9, 1999. The applicant shared with the panel various instances of inappropriate sexual behavior she and other adults witnessed Caitlin engage in with other children. Ms. Jakubek testified that because of Caitlin's sexual misconduct, she felt it best to only re-enroll a limited number of children into her daycare facility. The applicant explained that with only three children enrolled into the program, she believed that she could more easily supervise Caitlin until her behavior improved. Based upon the above, we therefore find that the applicant has proven, by a preponderance of the evidence, that she reasonably incurred additional

wage loss between September 1, 1999 through February 1, 2001¹ as a result of the criminally injurious conduct. Therefore, the October 4, 2004 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations (covering the time period between September 1, 1999 through February 1, 2001) and decision.

IT IS THEREFORE ORDERED THAT

{¶ 7} 1) The October 4, 2004 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;

{¶ 8} 2) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings;

1

The applicant testified that in February 2001 she had five children attending her daycare facility, which is the number of children she had enrolled in the program prior to closing her business.

{¶ 9} 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

{¶ 10} 4) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

GREGORY P. BARWELL
Commissioner

TIM MC CORMACK
Commissioner

ID #\18-dld-tad-041505

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Summit County Prosecuting Attorney and to:

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To S.C. Reporter 7-28-2005

