

[Cite as *In re Witham*, 2005-Ohio-6645.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: ELIZABETH M. WITHAM	:	Case No. V2005-80231
ELIZABETH M. WITHAM	:	<u>ORDER OF A THREE-</u> <u>COMMISSIONER PANEL</u>
Applicant	:	
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{¶ 1} On February 26, 2004, the applicant filed a reparations application seeking reimbursement of expenses incurred regarding the sexual abuse she sustained from 1992 through 1994, while a minor, by her stepfather. On June 16, 2004, the Attorney General denied the claim under R.C. 2743.56(B), R.C. 2743.60(A) and *In re Lay* (1991), 63 Ohio Misc. 2d 35. The Attorney General stated that the applicant failed to file a timely reparations application. On July 15, 2004, the applicant filed a request for reconsideration. The applicant asserted that she suffered from repressed memory of the incident and therefore was unable to file a reparations application by her twentieth birthday. On March 14, 2005, the Attorney General denied the claim once again. On April 11, 2005, the applicant filed a notice of appeal to the Attorney General's March 14, 2005 Final Decision. On September 22, 2005, the Attorney General filed a Supplemental Memorandum and Request for Remand recommending the claim be allowed since the applicant's therapist filed a letter indicating that the applicant was unable to recall the sexual abuse until December 2002. On September 22, 2005, the applicant's attorney filed a response to the Attorney General's Supplemental Memorandum and Request for Remand. Counsel indicated

that he agrees with the Attorney General's recommendation. Hence, a panel of three commissioners heard this matter on September 22, 2005 at 11:20 A.M.

{¶ 2} The applicant's attorney and an Assistant Attorney General attended the hearing and presented brief comments for the panel's consideration. The Assistant Attorney General stated, in light of having reviewed a letter from the applicant's therapist, that she now concedes that the applicant suffered from repressed memory and that the claim should be allowed. The Assistant Attorney General suggested the claim be remanded in order to conduct total economic loss calculations. Counsel raised no objection to the recommendation.

{¶ 3} In *In re Michaud*, V92-66356tc (10-28-94) the panel held that the statute of limitations is tolled if evidence is presented, which establishes by a reasonable degree of psychological certainty that the victim had repressed memories of the criminally injurious conduct. The statute of limitations begins to run when the victim recalls the criminally injurious conduct.

{¶ 4} In this case, the victim's counselor presented ample evidence that the applicant suffered from repressed memory until December 2002, which ultimately delayed her ability to recall her stepfather's sexual assaults from 1992 through 1994. In light of the above information, we find that the applicant's February 26, 2004 reparations application was timely filed. The applicant shall be granted an award in the amount of \$400.00 for unreimbursed counseling expense, as noted in the Attorney General's July 21, 2005 Supplemental Brief. Therefore, the March 14, 2005 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for total economic loss calculations and decision.

{¶ 5} IT IS THEREFORE ORDERED THAT

- 1) The March 14, 2005 decision of the Attorney General is REVERSED to render judgment in favor of the applicant in the amount of \$400.00;
- 2) This claim is remanded to the Attorney General for payment of the award;
- 3) This claim is also remanded to the Attorney General for additional economic loss calculations and decision;
- 4) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, under R.C. 2743.68;
- 5) Costs are assumed by the court of claims victims of crime fund.

GREGORY P. BARWELL
Commissioner

JAMES H. HEWITT III
Commissioner

RANDI OSTRY LE HOTY
Commissioner

ID #\8-dld-tad-092205

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

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To S.C. Reporter 12-15-2005

