[Cite as *In re Brown*, 2005-Ohio-5679.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION
www.cco.state.oh.us

IN RE: ELIZABETH M. BROWN	:	Case No. V2005-80398
ELIZABETH M. BROWN	:	ORDER OF A THREE-COMMISSIONER PANEL
Applicant	:	

: : : : :

{¶ 1} The applicant filed a reparations application seeking reimbursement of expenses incurred regarding a March 8, 2004 abduction incident. On December 14, 2004, the Attorney General granted the applicant an award in the amount of $8,748.04, of which $2,803.83 represented allowable expense and $5,944.21 represented work loss incurred from March 8, 2004 through June 24, 2004. On January 12, 2005, the applicant filed a request for reconsideration. On May 11, 2005, the Attorney General granted the applicant an additional award in the amount of $8,055.81 for unreimbursed allowable expense. On May 25, 2005, the applicant filed a notice of appeal to the Attorney General's May 11, 2005 Final Decision asserting that the only dispute on appeal concerns the $1,350.00 Anesthesia Associates of NW Dayton, Inc.("Anesthesia Associates") bill, which the Attorney General denied under R.C. 2743.60(D) and R.C. 2743.60(H). Hence, a panel of three commissioners heard this matter on August 10, 2005 at 11:15 A.M.

{¶ 2} Applicant's counsel and an Assistant Attorney General appeared at the hearing and presented oral argument for the panel's consideration. Constance Wycuff, an economic loss specialist from the Attorney General's Office of Crime Victim Services, briefly testified concerning her involvement with the claim. Ms. Wycuff stated that she spoke to the applicant's provider, who informed her that two statements were sent to the applicant seeking payment for services rendered. However, no payment had been received from neither the applicant nor her insurance carrier.

{¶ 3} The applicant's attorney asserted that the applicant undertook reasonable efforts to have the Anesthesia Associates bill paid by United Healthcare. Counsel argued that when the applicant received the April 28, 2004 billing statement she promptly contacted her provider, prior to the filing deadline, to have the bill paid. Counsel stated that both the applicant and her attorney informed the provider that a claim needed to be filed with United Healthcare. However, the provider negligently failed to file a claim until September 24, 2004. Counsel also noted the applicant tried to have the claim resubmitted to no avail. Counsel stated that under United Healthcare's claim filing policy, providers have only 90 days to submit a claim. Counsel argued that the bill was untimely filed because of the provider's error and not because of the applicant's lack of due diligence. Counsel urged the panel to also consider the nature and structure of medical billing today, since most claims are required to be electronically submitted by the provider within a specified period of time.

{¶ 4} The Assistant Attorney General maintained that the Anesthesia Associates bill should not be paid by the fund, since the applicant acted unreasonably by not submitting a timely claim to United Healthcare. The Assistant Attorney General asserted that two bills were sent to

the applicant approximately two months after service had been rendered (March 9, 2004). The Assistant Attorney General argued that the applicant should have immediately responded to the bills that were sent to her. The Assistant Attorney General argued that the applicant had actually 180 days in which to submit a claim to United Healthcare, but failed to do so. The Assistant Attorney General stated that by the time the claim was filed on September 24, 2004, the 180 day filing period had lapsed. The Assistant Attorney General argued that the applicant unreasonably failed to utilize a readily available collateral source and hence payment of the bill in question should be denied. We disagree.

{¶ 5} Revised Code 2743.60(D) states:

> (D) The attorney general, a panel of commissioners, or a judge of the court of claims shall reduce an award of reparations or deny a claim for an award of reparations that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is recouped from other persons, including collateral sources. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If the award or denial is conditioned upon the recoupment of the claimant's economic loss from a collateral source and it is determined that the claimant did not unreasonably fail to present a timely claim to the collateral source and will not receive all or part of the expected recoupment, the claim may be reopened and an award may be made in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source.
>
> If the claimant recoups all or part of the economic loss upon which the claim is based from any other person or entity, including a collateral source, the attorney general may recover pursuant to section 2743.72 of the Revised Code the part of the award that

represents the economic loss for which the claimant received the recoupment from the other person or entity.

{¶ 6} Revised Code 2743.60(H) states:

(H) If a claimant unreasonably fails to present a claim timely to a source of benefits or advantages that would have been a collateral source and that would have reimbursed the claimant for all or a portion of a particular expense, the attorney general, a panel of commissioners, or a judge of the court of claims may reduce an award of reparations or deny a claim for an award of reparations to the extent that it is reasonable to do so.

{¶ 7} The Assistant Attorney General relies on *In re Schroepfer* (1983), 4 Ohio Misc. 2d 15 to support his position that the failure to submit expenses to a readily available collateral source creates a presumption that all expenses have been recouped. We find *Schroepfer* and the other cases the Attorney General cites[1] to be unpersuasive in light of the facts of this case. However, we find persuasive the applicant's unconverted argument concerning current technological developments for electronic filings of medical claims. United Healthcare's policy for filing claims is unreasonable, (be it 90 days or 180 days) since neither providers nor patients are given ample opportunity to resolve billing disputes and/or file claims. This panel notes that there is a long standing practice to weigh a victim/applicant's age, educational background, and familiarity with the collateral source involved when determining whether or not a victim/applicant acted unreasonably.

[1] *In re Lowe*, V93-37147sc (8-30-94); *In re Rahaman*, V92-48269sc (9-30-94); *In re Ford*, V91-82064sc (2-28-95); *In re Ulatowski*, V93-80981 (5-31-95); and *In re Hatfield*, V94-26173tc (4-30-96).

{¶ 8} In *In re Arnold*, V2002-51508tc (1-16-03), the panel found that it was the responsibility of the medical provider to submit the necessary information to the applicant's insurance carrier. When a provider fails to do so, the panel held it would be unreasonable and unlawful to deny a claim for an award of reparations when the applicant did everything within his ability to have the claim properly paid by his insurance company. Likewise, we find that this applicant undertook reasonable steps to have the Anesthesia Associates bill promptly paid by her insurance company.

{¶ 9} We note that the Anesthesia Associates April 28, 2004 billing statement reads "[As a courtesy we have billed your insurance carrier. It has been over 30 days and no payment has been received. We consider this balance your personal responsibility. Please remit payment.]" However, we believe that the applicant, after receiving the above statement, began efforts to have the bill paid by immediately contacting her service provider. Nevertheless, after receiving ample notice to file a claim, the provider negligently failed to file a claim with United Healthcare until September 24, 2004. The provider's negligence should not be imputed to the applicant when the responsibility to file claims lies solely with the provider. As a result, United Healthcare was not "readily available" nor did the applicant act unreasonably under the circumstances. Based on the above information, we find that the applicant's claim should not be denied under R.C. 2743.60(D) or R.C. 2743.60(H). Therefore, the May 11, 2005 Attorney General decision shall be reversed to award $1,350.00 to the applicant as unreimbursed allowable expense.

IT IS THEREFORE ORDERED THAT

1) The May 11, 2005 decision of the Attorney General is REVERSED to render judgment in favor of the applicant in the amount of $1,350.00;

2) This claim is referred to the Attorney General under R.C. 2743.191 for payment of the award;

3) 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;

4) Costs are assumed by the court of claims victims of crime fund.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

RANDI OSTRY LE HOTY
Commissioner

ID #\3-dld-tad-081805

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

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