

[Cite as *In re Mason*, 2005-Ohio-5680.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: SHARON R. MASON	:	Case No. V2005-80410
SHARON R. MASON	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶ 1} The applicant filed a reparations application seeking reimbursement of expenses incurred regarding a domestic violence incident stemming from October 13, 2003 through September 18, 2004. On February 3, 2005, the Attorney General granted the applicant an award in the amount of \$25.37, however that amount was not paid since the sum was less than \$50.00. On February 28, 2005, the applicant filed a request for reconsideration asserting that she incurred attorney fees. On May 11, 2005, the Attorney General issued a Final Decision indicating that no modification of the previous decision was warranted. The Attorney General asserted that the applicant opted for a no-contact agreement instead of a Civil Protection Order (“CPO”). The Assistant Attorney General asserted that because the no-contact agreement failed to afford the applicant sufficient protection from the offender, the applicant’s claim must be denied. On May 27, 2005, the applicant filed a notice of appeal to the Attorney General’s May 11, 2005 Final Decision. Hence, a panel of three commissioners heard this matter on August 10, 2005 at 12:25 P.M.

{¶ 2} Neither the applicant nor anyone on her behalf appeared at the hearing. An Assistant Attorney General attended the hearing and presented an exhibit and oral argument for this panel's consideration.

{¶ 3} The Assistant Attorney General argued that the applicant's claim for attorney fee reimbursement does not qualify as allowable expense. The Assistant Attorney General stated that the applicant obtained an ex parte CPO on September 17, 2004, which was vacated on October 19, 2004. The Assistant Attorney General asserted that no-contact agreements fail to provide adequate protection for victims and therefore Ms. Mason should have sought to enforce the September 17, 2004 CPO. The Assistant Attorney General argued that a CPO affords more protection to victims and that only CPO's qualify as allowable expense under R.C. 2743.51(F)(4). The statutory language, however, belies this assertion.

{¶ 4} Revised Code 2743.51(F)(4) states:

(4) 'Allowable expense' includes attorney's fees not exceeding two thousand five hundred dollars, at a rate not exceeding one hundred fifty dollars per hour, incurred to successfully obtain a restraining order, custody order, *or other order to physically separate a victim from an offender*, if the attorney has not received payment under section 2743.65 of the Revised Code for assisting a claimant with an application for an award of reparations under sections 2743.51 to 2743.72 of the Revised Code. (Emphasis added).

{¶ 5} From review of the evidence and applicable law, we find that the applicant incurred unreimbursed allowable expense in the form of attorney's fees as a result of the September 18, 2004 incident. According to R.C. 2743.51(F)(4), allowable expense includes attorney fees "incurred to *successfully obtain* a restraining order, custody order, *or other order to physically*

separate a victim from an offender.” Revised Code 2743.51(F)(4) does not mandate that a victim/applicant obtain only a CPO to separate the offender from the victim.

{¶ 6} In lieu of the CPO and on the advice of counsel, the applicant instead opted for a no-contact agreement. This no-contact agreement was reduced to an order of the court on October 19, 2004. On October 19, 2004 Judge Inderlied of the Geauga County Common Pleas court issued a Judgment Entry, which reads that “[The parties herein agree and it is THEREFORE ORDERED AND ADJUDGED AND DECREED that Darrell Howard shall not have contact with Sharon Mason, including but not limited to telephone, including cell phone, at her place of residence or at her place of employment.]” Based on the above, we find it clear that the applicant successfully obtained an order to have the offender separated from her. Therefore, the May 11, 2005 decision of the Attorney General is reversed and the claim is referred to the Attorney General for economic loss calculations and decision.

IT IS THEREFORE ORDERED THAT

- 1) The May 11, 2005 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;
- 2) This claim is referred to the Attorney General for economic loss calculations and decision consistent with the panel’s decision;
- 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 #\1-dld-tad-081705

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

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To S.C. Reporter 10-25-2005

