

STATE OF MICHIGAN
COURT OF APPEALS

JANET L. CALLOWAY-GAINES,

Petitioner-Appellant,

v

CRIME VICTIM SERVICES COMMISSION,

Respondent-Appellee.

UNPUBLISHED

November 27, 2001

No. 217960

Crime Victims' Comp Board

LC No. 96-001073

Before: Holbrook, Jr., P.J., and Cavanagh and Gribbs*, JJ.

PER CURIAM.

Petitioner appeals by delayed leave granted from a decision of the Crime Victim Services Commission, denying her claim for loss of support. We vacate the Commission's decision and remand for further proceedings consistent with this opinion.

In 1985, petitioner's decedent, William Gaines, retired from his employment with the City of Detroit. He received a pension from the city and Social Security benefits. The pension provided for a surviving spouse benefit for his then-wife, Bernyce Gaines, who died after decedent retired. In March 1995, decedent married petitioner. On June 19, 1996, an intruder murdered decedent, and both his pension and Social Security benefits were terminated.¹ In July 1996, petitioner applied for benefits under the crime victims compensation board act, MCL 18.351 *et seq.* (hereinafter the Act).

The Commission did not hold a hearing, but reviewed the claim based on the documentary evidence submitted. The evidence showed, among other things, that in 1995, decedent received monthly retirement checks from the City of Detroit totaling \$19,984.71, Social Security benefits totaling \$10,309.20, and interest in the amount of \$42.25. The evidence also showed that in 1995 petitioner worked temporary jobs, earning \$4,123.76, and received unemployment benefits in the amount of \$1,112.00.

In December 1996, a claim specialist denied the claim for the following reason:

¹ Because decedent had married petitioner years after his retirement, there was no provision under which he could cover her with a survivor pension.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

The claimant did not suffer a minimum out-of-pocket compensable loss of \$200.00 or 2 continuous weeks' loss of earnings or support, or is not eligible to receive an award.

Petitioner thereafter appealed the decision to the Commission. In March 1998, the Commission issued its report and decision, awarding petitioner \$508 for the purchase of an urn for decedent's ashes, but affirming the denial of petitioner's claim for loss of financial support by decedent. The Commission made the following pertinent findings of fact:

A. The Victim, upon retirement, had signed off on a retirement option, whereby his first wife would become eligible to continue to receive his retirement benefits upon his death. She predeceased him, and, therefore, any benefits that would have accrued to his spouse were terminated at that time. The Commission cannot replace retirement income that terminated upon Mr. Gaines death.

B. Pursuant to MCL 18.361. Sec. 11. (5)(c), Social Security benefits are payments received from public funds, and are not a replaceable loss of support unless it was the principal support. This is not the case as Mr. Gaines received \$10,309.20 in Social Security Benefits and Janet Gaines' income was \$6,235.76 for 1995. Janet Gaines was not 50% dependant on Mr. Gaines for support.

On appeal, petitioner argues that the Commission improperly denied her claim for benefits because she was greatly dependent upon decedent, and suffered a loss of support when his pension and Social Security benefits ceased.

Review of a final agency determination is ordinarily limited to the record. *Northwestern Nat'l Casualty Co v Comm'rs of Insurance*, 231 Mich App 483, 496; 586 NW2d 563 (1998). In reviewing a decision of an administrative agency, such as the Commission, this Court must hold a decision unlawful and set it aside if substantial rights of the petitioner have been prejudiced because the decision, among other things, violates the constitution or a statute, is affected by other substantial and material errors of law, or is not supported by competent, material and substantial evidence on the whole record. MCL 24.306(1)(a), (d) and (f); *Sheppard v Crime Victim Services Commission Board*, 224 Mich App 281, 283; 568 NW2d 405 (1997). As appropriate, a reviewing court may affirm, reverse or modify the decision or remand the case for further proceedings. MCL 24.306(2); *Herman Brodsky Enterprises, Inc v State Tax Comm'rs*, 204 Mich App 376, 381; 522 NW2d 126 (1994).

Section 4 of the Act identifies persons who are eligible for compensation awards to include "[a] surviving . . . spouse . . . of a victim of a crime who died as a direct result of the crime." MCL 18.354(1)(b). MCL 18.361 discusses various aspects of the award process and provides, in part:

(1) An award made under this act shall be an amount not more than an out-of-pocket loss, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from the injury. The aggregate award under this act shall not exceed \$15,000.00 per claimant.

(2) Unless reduced under this act, an award made for loss of earnings or support shall be in an amount equal to the actual loss sustained. An award shall not exceed \$200.00 for each week of lost earnings or support.

* * *

(5) An award shall be reduced by the amount of 1 or more of the following payments received or to be received *as a result of the injury*:

* * *

(c) *From public funds*, but not including disability or death benefits paid or to be paid to a peace officer or a corrections officer on account of injuries sustained in the course of employment. [Emphasis added.]

We conclude that, in denying petitioner's claim for benefits, the Commission misinterpreted and misapplied certain provisions of the Act. Statutory interpretation is a question of law that is considered de novo on appeal. *Oakland County Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). The primary goal of judicial interpretation of statutes is to discern and give effect to the intent of the Legislature. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). The first criterion in determining intent is the specific and plain language of the statute. *Id.* Nothing will be read into a statute that is not within the manifest intention of the Legislature as gathered from the act itself. *In re Ramsey*, 229 Mich App 310, 314; 581 NW2d 291 (1998). If statutory language is unambiguous, it is presumed that the Legislature intended the clearly expressed meaning and the court must enforce it as plainly written. *DiBenedetto v West Shore Hospital*, 461 Mich 394, 402; 605 NW2d 300 (2000).

We find that the Commission's finding that it "cannot replace retirement income that terminated upon [decedent's] death," is flawed. In making such a finding, the Commission focused on the contractual provisions governing decedent's retirement plan with the City of Detroit. However, under the Act, the Commission was to determine whether petitioner was receiving support from decedent, which she would no longer receive because of the criminal act, in order to determine whether petitioner suffered a loss of support. "'Support' means actual monetary payments made by a victim . . . to or for a person principally dependent on the victim . . ." MCL 18.351(h). See also *Jerome v Crime Victims Compensation Bd*, 419 Mich 161, 164; 350 NW2d 239 (1984). As such, we conclude that the Commission should focus on petitioner's present circumstances versus those before decedent was murdered.

We further conclude that the Commission's finding that, "[p]ursuant to MCL 18.361. Sec. 11. (5)(c), Social Security benefits are payments received from public funds, and are not a replaceable loss of support" is also flawed. The plain language of § 351(5)(c) provides that an award shall be reduced by the amount of "public funds" received or to be received "as a result of the injury." In other words, if public funds, such as Social Security payments, are provided to a crime victim *because of the crime*, those payments must be deducted from the amount awarded. Here, decedent's Social Security payments were made to decedent before the criminal act and were not based on his murder. Indeed, after decedent was murdered, payments from Social

Security ceased. Accordingly, decedent's former Social Security payments do not constitute payments from public funds as contemplated by § 351(5)(c).

We note that on appeal the Commission does not address the basis of its decision. Rather, the Commission maintains that petitioner's claim was denied because she did not suffer a loss of support. To support this position, the Commission relies on information in a police report, which was a part of the record, that the parties had separated, lived in separate houses, that decedent had girlfriends, and that petitioner had a boyfriend. We note, however, that, contrary to the Commission's argument, the above grounds are not listed in the Commission's findings of fact as a basis for denial of petitioner's claim. We also note that, in addition to the information from the police report cited by the Commission, there was information that the parties were very close, that they spent a lot of time together, and that they went out to dinner and shopping. The evidence also showed that petitioner's car was in decedent's name. Accordingly, viewing the whole record, the police report relied on by the Commission on appeal does not provide competent, material and substantial evidence that petitioner did not suffer a loss of support or that, under MCL 18.361(7), she would not suffer a financial hardship as a result of any loss of support as a result of the criminal act, MCL 18.361(7). MCL 24.306(1)(d); see also *Jerome, supra*.

We vacate the Commission's decision denying petitioner's claim for loss of support benefits and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Roman S. Gribbs