[Cite as *In re Wittman*, 2004-Ohio-4183.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: JULIA A. WITTMAN	:	Case No. V2004-60121
CAROL C. WITTMAN	:	OPINION OF A THREE-COMMISSIONER PANEL
Applicant	:	

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{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to a November 6, 2002 sexual assault incident involving her minor daughter, Julia Wittman. On November 14, 2003, the Attorney General granted the applicant an award of reparations in the amount of $18.50. The Attorney General denied reimbursement of other expenses pursuant to R.C. 2743.60(D) contending that the applicant's economic loss had been or may be recouped from a collateral source, namely Blue Cross/Blue Shield. On November 21, 2003, the applicant filed a request for reconsideration seeking reimbursement of tuition expenses. On January 16, 2004, the Attorney General denied the applicant's claim for tuition reimbursement. On January 30, 2004, the applicant filed a notice of appeal to the Attorney General's January 16, 2004 Final Decision contending that she was forced to place Julia in a private school in order to separate her from the offender. On March 18, 2004, the Attorney General filed a Brief recommending the Final Decision be affirmed asserting that the applicant's claim for tuition reimbursement does not qualify as allowable expense, as the term is

defined in R.C. 2743.51(F). On April 22, 2004, the applicant filed a Hearing Memorandum recommending the Final Decision be reversed since Julia's transfer to Beaumont High School was rehabilitative for her recovery. Hence, this matter came to be heard before this panel of three commissioners on April 22, 2004 at 10:40 A.M.

{¶2} The applicant, applicant's counsel and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral argument for the panel's consideration. Carol Wittman testified that her husband moved to Cleveland from Florida in January 2002 to begin a new job, however the rest of the family did not relocate until June 2002.[1] Mrs. Wittman testified that she and Julia visited Cleveland in March 2002 and while there, they toured Beaumont High School, a well-known private school. The applicant stated that Julia disliked Beaumont and strongly preferred to attend Cleveland Heights High School, which is renowned for its music program. Mrs. Wittman explained that music is very important to Julia, who plays the bass, and that Beaumont High School does not have a music program. Hence, Mrs. Wittman stated that she and her husband relented and allowed Julia to attend the school of her choice, despite their dislike of Cleveland Heights High School (which reportedly was on academic watch).

{¶3} Mrs. Wittman testified that her daughter was sexually assaulted by a fellow classmate on November 6, 2002 and now suffers from post traumatic stress disorder. Mrs.

[1]Carol Wittman's testimony essentially mirrored her time line, (which is contained in the applicant's April 22, 2004 Hearing Memorandum), with regard to the events that occurred between November 6, 2002 (the date of the criminally injurious conduct) through February 11, 2003 (the date the victim was enrolled into Beaumont High School).

Wittman explained that Julia was emotionally unstable and had a difficult time attending Cleveland Heights after the incident, since she and the offender were in some of the same classes together and were both involved in the music program. The applicant noted that Julia's grades began to fall after the assault. Mrs. Wittman stated that Julia's therapist , Dr. H. Stevens Peirsol, recommended that Julia transfer to a new school, in light of the difficult time she was having at Cleveland Heights. Mrs. Wittman explained that Dr. Peirsol advised her that Julia needed separation from the offender and that she needed to attend school regularly in order to fully recover.

{¶4} Mrs. Wittman testified that the offender was never expelled or received any type of discipline from Cleveland Heights High School. The applicant explained that the offender was considered one of the school's most vital musicians and so the possibility of losing him threatened the school's entire orchestra program. Mrs. Wittman advised the panel that she and her husband attempted on numerous occasions to arrive at an equitable solution with James Cipolletti, principal of Cleveland Heights, and Carl Moody, superintendent of the Cleveland Heights school district, so that Julia could stay at Cleveland Heights and participate in the music program. However with no resolution in sight, Mrs. Wittman asserted that on January 22, 2003 she contacted Mark Freeman, superintendent of the Shaker Heights school district, to investigate the possibility of transferring Julia from Cleveland Heights to Shaker Heights. The applicant testified that Mr. Freeman informed her that arrangements would have to be made between he and Mr. Moody in order for Julia to attend a public school outside of her district: However, no agreement ever materialized. The applicant testified that on February 11, 2003, she finally withdrew Julia from Cleveland Heights and enrolled her at Beaumont High School. Mrs.

Wittman asserted that by February 2003 she no longer held any hope that a reasonable resolution could be reached with the administrators of Cleveland Heights. Therefore, with no viable option of sending Julia to Shaker Heights (the only other available public school) or any other recourse, Mrs. Wittman explained that she transferred Julia to Beaumont High School in order to separate her from the offender.

{¶5} Applicant's counsel stated, based on the testimony and evidence proffered, that the applicant's claim should be allowed. Counsel asserted, according to In re Weber (1989), 61 Ohio Misc. 2d 357, that tuition expense may qualify as allowable expense. Counsel contended that the applicant acted reasonably by placing Julia in Beaumont High School, since there was no readily available alternative public school within their district for the victim to attend. Counsel argued that no bona fide offer was ever made to the applicant in order for Julia to attend Shaker Heights High School. Counsel argued, but for the criminally injurious conduct, Julia's placement at Beaumont would not have occurred. Counsel stated, based on Dr. Peirsol's expert opinion, that Julia required separation from the offender in order to fully recover from the sexual assault. Counsel opined that, since the offender was not expelled from Cleveland Heights High School and no workable arrangements could be made with Principal Cipolletti or Superintendent Moody, the applicant was forced to withdraw Julia from Cleveland Heights High School and enroll her at Beaumont High School. Lastly, counsel moved to introduce Exhibits 1-8.

{¶6} The Assistant Attorney General conceded that Julia was a victim of sexual assault and that she suffers from post traumatic stress disorder. Nevertheless, the Assistant Attorney General stated that tuition expense is not an allowable expense item under R.C. 2743.51(F) and hence the applicant's claim must be denied. The Assistant Attorney General acknowledged that

In re Weber, supra, allowed an exception to the rule, when tuition expense is reasonably incurred for the rehabilitation and treatment of the victim. The Assistant Attorney General argued, in this case, that the applicant did not fully explore the option of Julia attending Shaker Heights High School. The Assistant Attorney General asserted that the applicant failed to take all reasonable steps to ensure that the victim could attend Shaker Heights High School.

{¶7} Former R.C. 2743.51(F) states:

{¶8} (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.

{¶9} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. The issue before us is whether the applicant *reasonably* incurred the tuition expense for the *rehabilitation and treatment of the victim* in accordance with R.C. 2743.51(F). According to the holding in In re Weber, supra, tuition expense does not generally constitute an allowable expense item under R.C. 2743.51(F); however in cases where such an expense was reasonably incurred for the rehabilitation and treatment of the victim the said expense may qualify as allowable expense.

{¶10} We find that the applicant has proven, by a preponderance of the evidence, that she incurred allowable (tuition) expense as a result of the criminally injurious conduct. Based

upon the weight of the applicant's testimony and the totality of the circumstances, we believe that it was reasonable for this applicant to have sought a new school for the victim, which was away from the offender. We believe the separation process was rehabilitative for the victim and was necessary for her recovery, which was supported by ample documentation provided by Dr. Peirsol. Moreover, we believe that the applicant, after repeatedly being ignored by school administrators, undertook reasonable steps to provide a safe school environment for Julia. When all else failed, the applicant was only left with the option of transferring the victim to Beaumont High School. We do not believe that Julia attending Shaker Heights High School was ever a viable option, especially so late in the school year. Therefore, we find that the applicant should only be reimbursed all allowable (tuition) expense incurred from February 2003 through June 2004, which covers the period of time from Julia's enrollment into Beaumont High School until the offender's graduation from Cleveland Heights High School. The January 16, 2004 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision.

{¶11} IT IS THEREFORE ORDERED THAT

{¶12} The January 16, 2004 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;

{¶13} This claim is remanded to the Attorney General for economic loss calculations and decision based upon the panel's findings;

{¶14} 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;

{¶15} Costs are assumed by the court of claims victims of crime fund.

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

ROBERT B. BELZ
Commissioner

ID #\2-dld-tad-051204

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

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