[Cite as *In re Blaylock-Chapman*, 2004-Ohio-6196.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: MEREDITH BLAYLOCK-CHAPMAN	:	Case No. V2004-60555
MEREDITH BLAYLOCK-CHAPMAN	:	ORDER OF A THREE-COMMISSIONER PANEL
Applicant	:	

: : : : :

{¶ 1} On January 8, 2003, the applicant filed a supplemental compensation application seeking additional reimbursement with respect to a September 11, 1999 domestic violence incident (she was intentionally struck with a motor vehicle by her ex-husband). On September 3, 2003, the Attorney General denied the applicant's claim pursuant to former R.C. 2743.60(E)(3) and In re Dawson (1993), 63 Ohio Misc. 2d 79, contending that the applicant engaged in felonious conduct during the pendency of the claim (April 2003) when she tested positive for cocaine on a hospital toxicology screening. On October 7, 2003, the applicant filed a request for reconsideration. On December 2, 2003 and December 23, 2003, letters from Brian Cook, former Senior Deputy Attorney General of the Crime Victims Services Section, were sent to the applicant indicating that no Final Decision would be issued since the applicant failed to file a timely request for reconsideration. The letters failed to indicate whether an appeal form was supplied to the applicant. On May 21, 2004, the applicant filed a notice of appeal. Hence, this matter came to be heard before this panel of three commissioners on August 18, 2004 at 10:45 A.M.

{¶ 2} Applicant's counsel and an Assistant Attorney General attended the hearing and presented oral argument for the panel's consideration. Case No. V2004-60555, V2004-60211 (the applicant's daughter's case), and V2004-60229 (the applicant's daughter's case) were heard simultaneously for hearing purposes. Applicant's counsel contended that Ms. Blaylock-Chapman's claim should be allowed pursuant to the panel's holding in In re Howard, V2003-40411tc (9-24-03), which allowed the applicant's claim, despite the decedent's positive toxicology report for cocaine. Counsel asserted that the applicant's alleged April 2003 statement concerning her recent drug use is not causally related to the criminally injurious conduct and therefore should not be considered a form of contributory misconduct under R.C. 2743.60(F) and In re Howard, supra.

{¶ 3} The Assistant Attorney General maintained that the applicant's claim must be denied pursuant to former R.C. 2743.60(E)(3) and In re Dawson, supra, since the applicant tested positive for cocaine on an April 2003 hospital toxicology report. The Assistant Attorney General explained that Ms. Blaylock-Chapman's case was denied pursuant to former R.C. 2743.60(E)(3) and not former R.C. 2743.60(F) and hence asserted that counsel's reliance on In re Howard, supra, is misplaced since: 1) the Howard decision concerned former R.C. 2743.60(F) and not former R.C. 2743.60(E)(3) and 2) the panel's September 24, 2003 decision in Howard was reversed by a judge of the court of claims on February 24, 2004. The Assistant Attorney General further explained that the date of the criminally injurious conduct determines which law shall be applied to ascertain one's eligibility to participate in the fund. Moreover, the Assistant Attorney General stated that the applicant's claim could also be denied pursuant to In re Porter (1994), 85 Ohio Misc. 2d 29, which held that evidence contained within medical records may be an

admission of felonious conduct that requires denial of the claim pursuant to former R.C. 2743.60(E) and In re Paige (1994), 66 Ohio Misc. 2d 156, which held that "the admission of possession of heroin within ten years prior to the criminally injurious conduct proves by a preponderance of the evidence that the applicant committed a felonious act."

{¶ 4} Former R.C. 2743.60(E)(3) states in pertinent part:

{¶ 5} (E) Neither a single commissioner nor a panel of commissioners shall make an award to a claimant if any of the following applies:

{¶ 6} (3) It is proved by a preponderance of the evidence presented to the commissioner or the panel that the victim or the claimant engaged, within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim, in conduct that would constitute a felony under the laws of this state, another state, or the United States.

{¶ 7} 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. First, we find that the Attorney General's December 2, 2003 letter to the applicant shall be deemed a Final Decision. Second, pursuant to former R.C. 2743.60(E)(3), In re Porter, supra, and In re Paige, supra, we find that the applicant engaged in felonious conduct during the pendency of the claim since she admitted to hospital personnel in April 2003 that she had recently engaged in cocaine use. Therefore, the December 2, 2003 decision of the Attorney General shall be affirmed pursuant to former R.C. 2743.60(E)(3).

{¶ 8} IT IS THEREFORE ORDERED THAT

{¶ 9} 1) The Attorney General's December 2, 2003 letter is hereby deemed a Final Decision;

{¶ 10} 2) The December 2, 2003 decision of the Attorney General is AFFIRMED pursuant to former R.C. 2743.60(E)(3);

{¶ 11} 3) This claim is DENIED and judgment is rendered in favor of the state of Ohio;

{¶ 12} 4) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

KARL H. SCHNEIDER
Commissioner

GREGORY BARWELL
Commissioner

ID #\1-dld-tad-090104

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

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