

[Cite as *In re Walker*, 2006-Ohio-3302.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: LEAH M. WALKER	:	Case No. V2005-80835
ATINA DAVIS	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶ 1} Atina Davis (“Ms. Davis” or “applicant”) filed a reparations application seeking reimbursement of expenses incurred as a result of an October 16, 2003 assault incident against her then minor daughter, Leah M. Walker (“Ms. Walker” or “victim”). On June 24, 2005, the Attorney General denied the claim pursuant to R.C. 2743.60(D) contending that the victim had health insurance coverage with Cigna. On July 21, 2005, the applicant filed a request for reconsideration. On November 18, 2005, the Attorney General granted the applicant an award in the amount of \$175.47 for unreimbursed wage loss sustained from October 16, 2004 through October 19, 2004. However, the Attorney General denied the claim for allowable expense asserting that the victim had insurance coverage with Cigna and Medicaid. On December 7, 2005, the applicant filed a notice of appeal to the Attorney General’s November 18, 2005 Final Decision. On February 27, 2006, the Attorney General filed a Brief conceding that Medicaid is not a collateral source in this case and that one tennis shoe was confiscated as evidence by the police and therefore should be reimbursed in the amount of \$85.00. However, the Attorney General maintained that the applicant failed to submit evidence of any additional wage loss.

Hence, this matter was heard before this panel of three commissioners on March 8, 2006 at 10:30 A.M.

{¶ 2} Applicant's counsel and an Assistant Attorney General appeared at the hearing and presented testimony, exhibits, and oral argument for the panel's consideration. Ms. Davis testified that she missed work from October 16, 2003 through October 24, 2003 to care for her daughter after she was assaulted (Exhibit 1). Ms. Davis explained that she attempted to obtain documentation from her former employer to prove that she missed the claimed time, but no such evidence was available for submission (Exhibit 1).

{¶ 3} Moreover, Ms. Davis testified that she witnessed her daughter's clothing and jewelry being removed at the scene by paramedics and that such was given to the police as evidence (Exhibit 2). Ms. Davis stated that the confiscated items were presented at the criminal trial, but were not returned to her. Ms. Davis explained that she attempted to retrieve the items to no avail. Ms. Davis indicated that she believed the police lost her daughter's possessions after the criminal trial concluded.

{¶ 4} Ms. Walker also testified that her shoes, shirt, jeans, four rings, and four necklaces were confiscated by the police for blood evidence shortly after she was stabbed. Ms. Walker stated that such items were presented as evidence at the criminal trial, but were lost after the trial in March of 2004. Ms. Walker explained that her mother attempted to recover such items, via the prosecutor and police, however to date those items have yet to be returned to her.

{¶ 5} Applicant's counsel stated that, based upon the testimony presented, the applicant's claims should be allowed. Counsel argued that the applicant reasonably incurred additional wage loss to care for her minor daughter while she was confined to the hospital from October 16,

2003 through October 24, 2003. Counsel also argued that the applicant should be reimbursed for the items, clothing and jewelry, that were taken as evidence. Counsel stated that such items were presented at the criminal trial and then lost by the police.

{¶ 6} The Assistant Attorney General maintained that the applicant has been fully reimbursed all economic loss. The Assistant Attorney General argued that the applicant failed to present sufficient evidence to show that she incurred additional wage loss and evidence replacement loss. The Assistant Attorney General noted that the applicant's former employer indicated that the applicant only missed two days of work and that the Police Property Room Report (Exhibit A) only noted that one tennis shoe was taken as evidence by the police.

{¶ 7} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, we make the following determination. We find that the applicant reasonably incurred additional wage loss for 5.5 days (while the victim was confined to the hospital) from October 16, 2003 through October 24, 2003. The applicant testified that she missed work on October 16, October 17, October 20, October 24, but stated that she only worked a half day on October 21, October 22, and October 23.

{¶ 8} We also find that the applicant incurred evidence replacement loss when the police confiscated the victim's clothing (shirt, pants, and shoes) for evidence. However at this time, we do not find there is sufficient evidence to grant the applicant reimbursement of the alleged confiscated jewelry. Should the applicant obtain evidence that she incurred additional economic loss that would be an appropriate basis for filing a supplemental compensation application. Therefore, the November 18, 2005 decision of the Attorney General shall be modified to award the applicant \$697.68, of which \$482.68 represents unreimbursed wage loss sustained from

October 16, 2003 through October 24, 2003 and \$214.70 represents unreimbursed evidence replacement loss for the victim's clothing that was confiscated by the police as evidence.

IT IS THEREFORE ORDERED THAT

- 1) The November 18, 2005 decision of the Attorney General is REVERSED to render judgment favor of the applicant in the amount of \$697.68;
- 2) This claim is referred to the Attorney General pursuant to R.C. 2743.191 for payment of the award;
- 3) This claim is remanded to the Attorney General for allowable expense calculations and decision;
- 4) 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;

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

THOMAS H. BAINBRIDGE
Commissioner

TIM MC CORMACK
Commissioner

RANDI OSTRY LE HOTY
Commissioner

ID #\4-dld-tad-6315

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

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To S.C. Reporter 6-28-2006

