

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: NICOLE SANTIAGO

Case No. V2007-90293

DEBRA M. SANTIAGO

Commissioners:
Thomas H. Bainbridge, Presiding
Karl C. Kerschner
Tim McCormack

MARY A. MORAN

VICTOR M. SANTIAGO

ORDER OF A THREE-
COMMISSIONER PANEL

Applicants

{¶1} The applicants filed a reparations application seeking reimbursement of expenses incurred with respect to the July 23, 2006 murder of Nicole Santiago (“Nicole”). Nicole was shot by Christopher Graybill while she was in her vehicle. On December 27, 2006, the Attorney General granted an award totaling \$7,500.00 for unreimbursed funeral expense. On January 25, 2007, Debra Santiago filed a request for reconsideration contending that she incurred work loss in the amount of \$2,752.00 from July 23, 2006 through September 17, 2006 as a result of having endured the aftermath of the criminally injurious conduct. On March 23, 2007, the Attorney General issued a Final Decision indicating that the previous decision warranted no modification. On April 19, 2007, the applicants filed a notice of appeal to the Attorney General’s March 23, 2007 Final Decision. On October 3, 2007 at 11:30 A.M., this matter was heard by this panel of commissioners.¹

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On December 17, 2007, this panel severed case number V2007-90293 which lists Nicole Santiago as the victim and created case number V2007-90668 which lists Debra Santiago as the victim. Both case numbers involve the same criminally injurious conduct incident.

{¶2} Debra Santiago (“Ms. Santiago”) and Mary Moran (“Ms. Moran”), applicants’ counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel’s consideration. Ms. Santiago testified concerning the horrible ordeal she experienced at her critically wounded daughter’s side. Ms. Santiago testified that she was told that Nicole had been shot, was brain-dead, and was on life support. She stated that she remained at Nicole’s bedside for three days, holding and talking to Nicole until her organs were harvested for donation. Ms. Santiago described the incident as a “nightmare.”

{¶3} Ms. Santiago related that she works for Lakewood Hospital as a caterer and that due to the criminally injurious conduct she was unable to cope with work and life. Ms. Santiago stated that Dr. Govani, her family physician, recommended that she go on Family Medical Leave. Ms. Santiago testified that she remained off work for eight weeks, however her employer informed her that if she did not return to work by September 21, 2006, then she would no longer have a job. Ms. Santiago explained that she needed the money and hence she returned to work.

{¶4} Ms. Santiago further testified that approximately 2 to 3 weeks after Nicole’s death, she received a letter from the impound lot indicating that she could retrieve Nicole’s belongings from her vehicle. Ms. Santiago contended that after viewing the gruesome contents of the vehicle she was mentally unable to remove any contents from the vehicle and that she did not take the vehicle into her possession (i.e., blood “everywhere” and the lack of a back window).

{¶5} Applicants’ counsel asserted, based on the testimony presented, that Ms. Santiago’s claim for lost wages should be allowed. Counsel stated that Ms. Santiago is seeking \$2,752.00 in lost wages from July 23, 2006 through September 17, 2006 because she was unable to work as a result of the criminally injurious conduct.

{¶6} The Assistant Attorney General maintained that Ms. Santiago is unable to recover allowable expense in this case because she did not sustain any wage loss for the rehabilitation and treatment of her daughter. The Assistant Attorney General also asserted that Ms. Santiago is unable to recover work loss because she is not the victim in this case.

{¶7} Revised Code 2743.51(F)(1) states:

(F)(1) "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.

(2) An immediate family member of a victim of criminally injurious conduct that consists of a homicide, a sexual assault, domestic violence, or a severe and permanent incapacitating injury resulting in paraplegia or a similar life-altering condition, who requires psychiatric care or counseling as a result of the criminally injurious conduct, may be reimbursed for that care or counseling as an allowable expense through the victim's application. The cumulative allowable expense for care or counseling of that nature shall not exceed two thousand five hundred dollars for each immediate family member of a victim of

that type and seven thousand five hundred dollars in the aggregate for all immediate family members of a victim of that type.

(3) A family member of a victim who died as a proximate result of criminally injurious conduct may be reimbursed as an allowable expense through the victim's application for wages lost and travel expenses incurred in order to attend criminal justice proceedings arising from the criminally injurious conduct. The cumulative allowable expense for wages lost and travel expenses incurred by a family member to attend criminal justice proceedings shall not exceed five hundred dollars for each family member of the victim and two thousand dollars in the aggregate for all family members of the victim.

(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.

{18} R.C. 2743.51(G) states:

"Work loss" means loss of income from work that the injured person would have performed if the person had not been injured and expenses reasonably incurred by the person to obtain services in lieu of those the person would have performed for income, reduced by any income from substitute work actually performed by the person, or by income the person would have earned in

available appropriate substitute work that the person was capable of performing but unreasonably failed to undertake.

{¶9} From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. We find, under this claim, that Ms. Santiago has failed to prove that she incurred any form of economic loss as a result of criminally injurious conduct. (However, see Claim No. V2007-90668, where Ms. Santiago was found to have been a victim in her own right.) Ms. Santiago is ineligible for allowable expense (wage loss) under R.C. 2743.51(F) because she did not incur such for the rehabilitation and treatment of the victim, Nicole. Ms. Santiago is ineligible for work loss under R.C. 2734.51(G) because she is not the victim in this claim. Therefore, we find that the March 23, 2007 decision of the Attorney General shall be affirmed.

{¶10} IT IS THEREFORE ORDERED THAT

{¶11} 1) The March 23, 2007 decision of the Attorney General is AFFIRMED;

{¶12} 2) This claim is denied and judgment is entered for the state of Ohio;

{¶13} 3) This order is entered without prejudice to the applicants' right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

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

THOMAS H. BAINBRIDGE
Presiding Commissioner

KARL C. KERSCHNER
Commissioner

TIM MC CORMACK
Commissioner

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

Filed 1-31-2007
Jr. Vol. 2267, Pgs. 146-151
To S.C. Reporter 6-5-2008