

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: RITA SMITH

Case No. V2007-90501

RITA SMITH

Applicant

Commissioners:
Thomas H. Bainbridge, Presiding
Gregory P. Barwell
Tim McCormack

ORDER OF A THREE-
COMMISSIONER PANEL

{¶1} On January 20, 2007, the applicant filed a supplemental reparations application seeking additional reimbursement of expenses incurred with respect to a November 21, 1990 assault incident. On March 26, 2007, the Attorney General granted the applicant an award totaling \$578.33 in unreimbursed work loss incurred from January 1, 2006 through March 31, 2007. On April 12, 2007, the applicant filed a request for reconsideration asserting that due to her husband's death she now receives Social Security survivorship benefits, which are not a collateral source. On July 9, 2007, the Attorney General determined that the previous decision warranted no modification. On July 11, 2007, the applicant filed a notice of appeal to the Attorney General's July 9, 2007 Final Decision. On August 30, 2007, the Attorney General filed a brief recommending the applicant be granted an additional award totaling \$8,819.06 for unreimbursed work loss incurred from January 1, 2006 through March 31, 2007. The Attorney General contends that the applicant's receipt of Social Security survivorship benefits is not a collateral source in this case, since the applicant would

have received such regardless of the criminally injurious conduct. On August 31, 2007, the applicant's attorney filed a statement indicating that he agrees with the Attorney General's new recommendation. On September 6, 2007 at 10:25 A.M., this matter was heard by this panel of three commissioners.

{¶2} The applicant's attorney and an Assistant Attorney General attended the hearing and presented brief comments for the panel's consideration. The Assistant Attorney General reiterated that the applicant should be granted an additional award for work loss in the amount of \$8,819.06. The Assistant Attorney General stated that the applicant's receipt of Social Security survivorship benefits is replacement income and does not qualify as a collateral source. Applicant's counsel agreed with the Attorney General's recommendation.

{¶3} 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. We find that the applicant incurred additional work loss in the amount of \$8,819.06 from January 1, 2006 through March 31, 2007. Therefore, the July 9, 2007 decision of the Attorney General shall be reversed to grant the applicant an award in the amount of \$8,819.06 for work loss.

{¶4} IT IS THEREFORE ORDERED THAT

{¶5} 1) The July 9, 2007 decision of the Attorney General is REVERSED to render judgment in favor of the applicant in the amount of \$ 8,819.06;

{¶6} 2) This claim is remanded to the Attorney General for payment of the award;

{¶7} 3) 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;

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

Presiding Commissioner

GREGORY P. BARWELL
Commissioner

Commissioner

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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 10-23-2007