

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

65 South Front Street, Fourth Floor
Columbus, OH 43215
614.387.9860 or 1.800.824.8263
www.cco.state.oh.us

IN RE: ELMER D. PARSLEY

Case No. V2007-90587

ELMER D. PARSLEY

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

Applicant

ORDER OF A THREE-
COMMISSIONER PANEL

{¶1} The applicant filed a reparations application seeking reimbursement for medical expenses and replacement services loss incurred as the result of an assault that occurred on January 24, 2006. On March 15, 2007, the Attorney General denied the applicant's claim for medical expenses since they had been reimbursed by the U.S. Department of Veterans Affairs, a collateral source pursuant to R.C. 2743.51(B)(2). The applicant's claim for replacement services loss was also denied because the Attorney General asserted the applicant had failed to establish by a preponderance of the evidence that he incurred this expense. The Attorney General contended applicant did not have sufficient income to support the allegation that he was paying \$400.00 per month for replacement services loss. On April 2, 2007, the applicant filed a request for reconsideration. The applicant contends he has sufficient income to support the cost of the replacement services loss and submitted bank statements from Huntington National Bank. On July 30, 2007, the Attorney General issued a Final Decision which again denied the applicant's claim for replacement services loss. On September 10, 2007, the applicant filed a notice of appeal to the Attorney General's July 30, 2007 Final Decision.

On December 5, 2007 at 10:30 A.M., this matter was heard before this panel of three commissioners.

{¶2} The applicant, his counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. Mr. Parsley testified that he sustained two broken ankles as the result of a hit and skip accident which occurred on January 24, 2006. He asserted that, as the result of his injuries his ex-wife, Philomena, did his laundry, prepared his meals, cleaned, ran errands and transported him to medical appointments during his period of disability from February 3, 2006 through December 6, 2006. Mr. Parsley stated he paid his ex-wife in cash and admitted that the receipts which appear in the claim file were produced for the benefit of his reparations application and not created at the time the services were provided. The applicant explained that the cash withdrawals from his bank account evidence a payment history to his ex-wife. However, the withdrawals vary in amounts and the applicant did not submit any corresponding documentation from Philomena showing that she made deposits into her bank account.

{¶3} Under cross examination by the Assistant Attorney General, the applicant explained he made the \$400.00 per month payment even when he was initially hospitalized. Mr. Parsley did admit that on occasion his daughter would drive him to medical appointments. He did not pay his daughter for these services since she was living at his home with her family rent free. The applicant also conceded he had no additional medical documentation beyond his stay at the Veteran's Hospital but stated his mobility was impeded by his broken ankles.

{¶4} Mr. Parsley's counsel argued that the burden of proof had been met establishing that the applicant had incurred replacement services loss. While counsel conceded that the medical evidence was not that strong, counsel argued that Mr.

Parsley's testimony established the injuries he sustained justified the replacement services loss. Counsel asserted the withdrawals from the applicant's bank account proved that he was paying his ex-wife for the services she was providing to him. The Assistant Attorney General believed Mr. Parsley had failed to prove by a preponderance of the evidence that he incurred replacement services loss since: 1) no medical documentation supported the need for services, 2) the services were not reasonable since the amount remained constant whether Mr. Parsley was hospitalized or not and, 3) Mr. Parsley offered no proof that his ex-wife received the money in the amounts allegedly paid.

{¶5} R.C. 2743.51(H) states:

(H) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income, but for the benefit of the person's self or family, if the person had not been injured.

{¶6} The applicant has the burden of proof to present a prima facie case that he has incurred the expense in question and the expense is causally related to the injuries sustained at the time of the criminally injurious conduct. *In re Williams*, V77-0739jud (3-26-79).

{¶7} While this panel certainly sympathizes with Mr. Parsley with respect to the injuries he sustained, the law clearly provides that the burden of proof rests with him to prove each element of his claim. From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel finds that the applicant has failed to meet his burden of proof and the Attorney General's July 30, 2007 Final Decision shall be affirmed.

{¶8} IT IS THEREFORE ORDERED THAT

{¶9} 1) The July 30, 2007 decision of the Attorney General is AFFIRMED;

{¶10} 2) This claim is DENIED and judgment is rendered for the state of Ohio;

{¶11} 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;

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

KARL C. KERSCHNER
Presiding Commissioner

THOMAS H. BAINBRIDGE
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 Franklin County Prosecuting Attorney and to:

Filed 1-31-2008

Jr. Vol. 2267, Pgs. 152-155

To S.C. Reporter 6-5-2008