

[Cite as *In re Buford*, 2008-Ohio-6095.]

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: DAMARIO BUFORD

POLLY BUFORD

and

SHAMIKA MALONE

Applicants

Case No. V2008-30561

Commissioners:
Karl C. Kerschner, Presiding
Tim McCormack
Gregory Barwell

ORDER OF A THREE COMMISSIONER PANEL

{¶ 1} On July 11, 2006, the applicant, Shamika Malone, filed a compensation application as the result of the murder of Damario Buford. She filed the application on her own behalf and on behalf of Baby Buford, whom she asserts was the afterborn child of the decedent. On September 25, 2006, the applicant, Polly Buford, filed a compensation application as the result of Damario Buford's murder seeking reimbursement of funeral expenses.

{¶ 2} On November 28, 2006, the Attorney General issued a finding of fact and decision finding the decedent was a victim of criminally injurious conduct and granting the applicants an award in the amount of \$6,673.20, which represented reimbursement of funeral expense incurred. The applicant, Shamika Malone, was granted \$946.10

while the applicant, Polly Buford, was granted \$5,727.10. However, applicant Shamika Malone's claims for dependent's economic loss and dependent's replacement services loss filed on her own behalf and on behalf of Baby Buford were denied for failure to prove such losses were incurred. On December 18, 2006, the applicant, Shamika Malone submitted a request for reconsideration. On June 10, 2008, the Attorney General rendered a Final Decision finding there was no reason to modify the Attorney General's initial decision. On June 18, 2008, the applicant Shamika Malone filed a notice of appeal from the June 10, 2008 Final Decision of the Attorney General. Hence a hearing was held before this panel of commissioners on August 28, 2008 at 10:40 A.M.

{¶ 3} Assistant Attorney General Amy O'Grady appeared on behalf of the Attorney General's office. The applicant, Shamika Malone, did not appear. Assistant Attorney General O'Grady offered a brief statement for the panel's consideration. Ms. O'Grady stated the issue before the panel is whether or not Ms. Malone incurred dependent's economic loss and dependent's replacement services loss. Ms. O'Grady asserts the applicant has failed to meet her burden. The Attorney General's investigation revealed that the minor afterborn child identified as Baby Buford is currently receiving \$462.75 per month and Shamika Malone is receiving food stamps, Medicaid, and in the past has received aid to dependent children monies. Also, information from the Ohio Department of Job and Family Services indicated, contrary to Ms. Malone's assertion on the compensation application, that Mr. Buford had never resided with her or with her child. Accordingly, Ms. O'Grady requested that the Attorney General's Final Decision be affirmed. Whereupon the hearing was concluded.

{¶ 4} R.C. 2743.51(I) states:

“(I) ‘Dependent’s economic loss’ means loss after a victim’s death of contributions of things of economic value to the victim’s dependents, not including services they would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death. If a minor child of a victim is adopted after the victim’s death, the minor child continues after the adoption to incur a dependent’s economic loss as a result of the victim’s death. If the surviving spouse of a victim remarries, the surviving spouse continues after the remarriage to incur a dependent’s economic loss as a result of the victim’s death.”

{¶ 5} R.C.2743.51 (J) states:

“(J) ‘Dependent’s replacement services loss’ means loss reasonably incurred by dependents after a victim’s death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if the victim had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death and not subtracted in calculating the dependent’s economic loss. If a minor child of a victim is adopted after the victim’s death, the minor child continues after the adoption to incur a dependent’s replacement services loss as a result of the victim’s death. If the surviving spouse of a victim remarries, the surviving spouse continues after the remarriage to incur a dependent’s replacement services loss as a result of the victim’s death.”

{¶ 6} R.C. 2743.52(B) states:

“(B) A court of claims panel of commissioners or a judge of the court of claims has appellate jurisdiction to order awards of reparations for economic loss

arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.”

{¶ 7} Black’s Law Dictionary Sixth Edition (1990) defines preponderance of the evidence as: “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.”

{¶ 8} Black’s Law Dictionary Sixth Edition (1990) defines burden of proof as: “the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.”

{¶ 9} Upon full and careful consideration of all the information presented at the hearing, we find that the applicant has failed to prove by a preponderance of the evidence that either she or her minor child has incurred dependent’s economic loss or dependent’s replacement services loss. Therefore, the June 10, 2008 decision of the Attorney General is affirmed.

{¶ 10} IT IS THEREFORE ORDERED THAT

{¶ 11} 1) The June 10, 2008 decision of the Attorney General is AFFIRMED;

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

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

KARL C. KERSCHNER
Presiding Commissioner

TIM MC CORMACK
Commissioner

GREGORY BARWELL
Commissioner

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

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