

{¶1} On July 2, 2002, the Attorney General issued a Finding of Fact and Decision that denied the claim pursuant to former R.C. 2743.60(D) contending that all the applicants' economic loss had been or may be recouped from a collateral source, specifically Medicaid. The Attorney General also stated that there was no evidence that the victim had incurred work loss. On September 30, 2002, the Attorney General issued a Final Decision that denied the claim for work loss again. On October 30, 2002, David Gilcreast filed an appeal contending that reimbursement of the victim's work loss is still owed. On January 31, 2003, this panel of commissioners held a final determination in abeyance and continued the hearing in order to perpetuate the testimony of Diane Gingo, Director of Treatment Services for Girls at Shelter Care. Hence, this appeal came to be reheard before this panel of three commissioners on March 20, 2003 at 10:10 A.M.

{¶2} Marsha C. Kelso, the victim's mother, applicants' counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel's consideration. Diane Gingo testified, via telephone, that she wrote the September 20, 2002 letter whereby she stated that Shauneeka's placement at Shelter Care "would not have interfered with her opportunity to work." Ms. Gingo advised the panel that Shelter Care encourages residents to obtain employment and that many residents have gained work experience while at Shelter Care. Ms. Gingo explained that Shelter Care works closely with any potential summer employment program in order to ensure that all eligible residents have proper work assignments and supervision. Ms. Gingo insisted that neither Shauneeka's placement at Shelter Care nor with the Angels, the residential foster care family, restricted her employment opportunities. Lastly, Ms.

Gingo adamantly contended that she did not recall a conversation with Ms. Kelso or Shauneeka regarding summer employment until after Shauneeka missed the scheduled orientation.

{¶3} Marsha Kelso briefly testified concerning the restrictions on Shauneeka's mobility since she was also told by Shelter Care when she could remove Shauneeka off-site. Ms. Kelso stated that she promptly advised the Angels of Shauneeka's mandatory orientation session otherwise, Shauneeka would not have been able to participate in the program.

{¶4} Counsel argued the work loss claim should be allowed based upon Ms. Kelso's attempt to work within Shelter Care guidelines in order to obtain employment for Shauneeka. Counsel urged the panel to focus on the restrictions that Shelter Care placed upon Shauneeka's mobility as part of Shelter Care's current plan of care. However, the Assistant Attorney General argued that it is the applicant's burden to establish work loss and that Ms. Kelso has failed to prove that Shauneeka's work loss stemmed from Shelter Care's refusal to allow Shauneeka to work based upon Ms. Gingo's testimony.

{¶5} 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 believe Ms. Kelso's efforts to obtain employment for her daughter were rejected by Shelter Care and/or its agents. In light of Shauneeka's condition which stemmed from the victimization, we note that certain restrictions would have naturally been placed upon her in terms of supervision and care. As a result of Shauneeka's placement with a residential foster care family, we must consider Shelter Care's guidelines on controlling Shauneeka's mobility both on and off Shelter Care premises. The Attorney General's argument that Ms. Kelso failed to act within the guidelines of the Shelter Care system is not well-taken. We believe Ms. Kelso's proactive attempt to secure

employment for her daughter should be commended. We also note that Ms. Kelso indicated she attempted to work with Shelter Care after having informed them that Shauneeka had obtained employment to no avail. Neither Shelter Care nor the residential foster care family provided any assistance to Ms. Kelso to obtain or retain summer employment for Shauneeka. Based upon Shelter Care's public endorsement of employment, we believe that Shelter Care could have made a more concerted effort to retain employment for Shauneeka that summer, if in fact it really wanted Shauneeka to work. Hence, this panel finds that the claim for work loss applies to the summer of 2001 only. No testimony was presented regarding circumstances that may have occurred after this time period. Therefore, the September 30, 2002 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for work loss calculations and decision.

{¶6} IT IS THEREFORE ORDERED THAT

{¶7} 1) The September 30, 2002 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicants;

{¶8} 2) This claim is remanded to the Attorney General for work loss calculations and decision;

{¶9} 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application pursuant to R.C. 2743.68;

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

KARL H. SCHNEIDER
Commissioner

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JAMES H. HEWITT III
Commissioner

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