

[Cite as *In re Turner*, 2003-Ohio-2810.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: ASHLEY M. TURNER	:	Case No. V2003-40062
ANGIE WATSON	:	<u>OPINION OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} This appeal came to be heard before this panel of three commissioners on April 3, 2003 at 10:30 A.M. upon the applicant’s January 13, 2003 appeal from the January 6, 2003 Final Decision of the Attorney General.

{¶2} The Attorney General originally granted the applicant an award of reparations in the amount of \$233.25 for allowable expense. However, the Attorney General denied other purported losses pursuant to R.C. 2743.60(D) contending that United Healthcare and Cigna were collateral sources. The Attorney General also denied the applicant’s claim for sibling counseling reimbursement and noted that the victim’s forensic examination should have been reimbursed by the SAFE program. On reconsideration, the Attorney General granted the applicant an additional award in the amount of \$356.33, but denied the applicant’s claim for wage loss and sibling counseling reimbursement. The applicant filed an appeal of the Attorney General’s Final Decision.

{¶3} The applicant, applicant's counsel and an Assistant Attorney General attended the hearing and presented testimony, an exhibit, and oral argument for this panel's consideration. At the beginning of the hearing, the Assistant Attorney General informed the court of her new mileage recommendation in the amount of \$33.48. Counsel expressed no objection to the Attorney General's mileage recommendation but explained to the court the main issue on appeal is whether siblings qualify as immediate family members according to R.C. 2743.51(F)(2) and R.C. 2743.51(W). Counsel asserted that the Victims of Crime (VOC) statute is silent as to what computation method should be used for calculating degrees of consanguinity and affinity.

{¶4} Angie Watson, the victim's mother, briefly testified concerning the impact of Ashley's victimization on her family. Ms. Watson explained that she has three children and that Ashley is the eldest of the three. Ms. Watson advised the panel that Ashley's siblings are aware of the abuse that Ashley suffered at the hands of their father. Ms. Watson stated that Ashley's siblings blame her for disrupting their lives by placing their father in jail. Ms. Watson stated that her youngest child is in counseling however, the middle child has refused to attend any counseling sessions. Ms. Watson indicated that her previous insurance provider covered all expenses except for co-pays. However, Ms. Watson stated that she is unaware of what expenses her new insurance provider will cover.

{¶5} Counsel argued that, based on the applicant's testimony concerning the need for sibling counseling, the purpose of the victims' statute and the court's discretion to interpret R.C. 2743.51(W) with respect to computing degrees of consanguinity and affinity, the applicant's claim should be allowed. Counsel argued that the panel, who sit in a judicial capacity, is charged with the duty of interpreting the meaning of R.C. 2743.51(W) since the VOC statute is silent.

Counsel further stated that the statute was created to help victims and applicants recover unreimbursed economic loss unlike R.C. 2105.03, which the Attorney General suggests following. Counsel asserted that looking at probate's method of calculating consanguinity and affinity is absurd since the goals of this program and probate law differ considerably. Counsel stated the sole purpose of probate law is to determine order and distribution of a deceased's estate and not as a mechanism for assisting eligible victims of crime. Counsel further contended that the panel is not bound to follow the rational or statutes of probate law in this case. Counsel suggested the panel consider tort law (wrongful death and/or insurance claims) as a more appropriate comparison since siblings are permitted to recover damages in those types of cases. Counsel urged the panel that a broad interpretation of R.C. 2743.51(W) in terms of computing degrees of consanguinity and affinity is warranted. Counsel stated that the definition of "immediate family member" should be expansive for the public's sake. Counsel asserted that to find otherwise would be contrary to law, unreasonable, and a violation of the very purpose of the VOC statute.

{¶6} The Assistant Attorney General began by stating she was empathic to the applicant's situation however, she maintained that the applicant's claim for sibling counseling reimbursement must be denied. The Assistant Attorney General noted that many inequities in this program exist, but argued that the law for determining degrees of consanguinity and affinity is well settled under R.C. 2105.03. The Assistant Attorney General stated that probate law clearly determines siblings to be within two degrees of consanguinity. The Assistant Attorney General argued that the civil law interpretation was adopted by statute and since the VOC statute is silent R.C. 2105.03 must be followed. Lastly, the Assistant Attorney General stated the proper

venue for arguing change of the statute should be before the Ohio legislature and not before the panel of commissioners.

{¶7} From review of the file and with full and careful consideration given to the information presented at the hearing, this panel makes the following determination. Under Amended Substitute Senate Bill 153, R.C. 2743.51(F)(2) was drafted to reimburse allowable expense to immediate family members of a victim (those immediate family members requiring care or counseling as a result of the criminally injurious conduct) of a homicide, a sexual assault, domestic violence, or a severe and permanent incapacitating injury resulting in a paraplegia or a similar life-altering condition. Under R.C. 2743.51(W) an “immediate family member” is defined as an individual who is related to a victim within the first degree of consanguinity and affinity. Even though R.C. 2743.51(F)(2) and R.C. 2743.51(W) provides some guidance as to whom would qualify for reimbursement, the overall VOC statute is silent with respect to what method of computation should be used for determining degrees of consanguinity and affinity for this program. The Attorney General’s argument that this issue is settled is not well-taken by this panel of commissioners. We believe this issue is proper for court interpretation concerning this new area of victim’s law. Therefore, let us first examine the purpose and intent of the Victims of Crime statute, itself.

{¶8} The Ohio VOC program was created in 1976 to assist victims of criminally injurious conduct and applicants in the recovery of unreimbursed economic loss. Over the years the program has gone through a series of procedural and substantive changes, all of which have significantly impacted (both negatively and positively) those of whom the program was intended to help. Nevertheless, the goal of the statute has remained remedial in nature, thereby invoking a

broad interpretive perspective. Looking at the history of this program, the legislature has been very careful and specific in its drafting in order to achieve its desired goal. For instance the legislature emphatically added language that barred granting an award to any applicant where the victim had been convicted of a felony (within ten years of the criminally injurious conduct or during the pendency of the claim), despite the negative ramifications that this language has often had on the true victims of crime, primarily minor children of the victim. From this example, we see that the legislature can and has been explicit when it has wanted to reach a certain objective. Likewise, we can also infer that had the legislature wanted to compute the degrees of consanguinity or affinity *strictly* by the rules of civil law then it would have expressly done so; like it did in R.C. 2105.03.

{¶9} Moreover, this panel must note that this program is truly a unique creature of the legislature that has never really operated as other areas of the law. Since this program was designed to be remedial in nature we do not believe that the legislature intended to exclude siblings by calculating degrees of consanguinity and affinity in accordance with probate law: To do so would be patently unfair and a violation of the entire spirit of the program. Therefore, in good conscious we cannot find that simply because probate law or any other area of codified law does something a certain way, that this program is required to follow suit unless clearly mandated.

{¶10} Furthermore, we know the purposes of probate law and this program are distinctively different. R.C. 2105.03 was created to clarify descent and distribution issues after an individual has expired, which is totally different from the purpose of the VOC statute. While reviewing probate law, we discovered that R.C. 2105.03 appears to be restricted to determining

intestate succession. R.C. 2105.03 reads that “[I]n the determination of intestate succession, next of kin shall be determined by degrees of relationship computed by the rules of civil law.” We also note that R.C. 2105.03 uses the phrase “next of kin,” while R.C. 2743.51(F)(2) and R.C. 2743.51(W) uses the phrase “immediate family member.” We do not find these two phrases to be identical; hence we find that R.C. 2105.03 cannot be logically linked to sufficiently argue that the legislature intended the VOC program to follow the same mode of calculating degrees of consanguinity and affinity as probate law when the use of stated terms clearly differ. Furthermore, the terms themselves are different. Probate law does not use the term “immediate family member” while the VOC statute does. Moreover, we have discovered that other VOC programs around the country utilize the term “immediate family member” and are currently reimbursing spouses, parents, children and siblings of a victim of criminally injurious conduct.

{¶11} From a policy perspective, we believe that the legislative intent of R.C. 2743.51(F)(2) and R.C. 2743.51(W) was to provide recovery for the nuclear family. Hence, we find that a broad interpretation of R.C. 2743.51(W) should be utilized in order to meet the overall goal of this program. Therefore, we find an “immediate family member” to be inclusive of siblings, as it relates to this case based upon the testimony presented detailing the impact this incident has had upon the siblings of this victim.

{¶12} In light of the above reasons, the January 6, 2003 decision of the Attorney General shall be modified to award \$389.81 (\$356.33 + \$33.48) to the applicant as unreimbursed economic loss. However, that part of the January 6, 2003 decision which denied sibling counseling reimbursement shall be reversed and this claim shall be remanded to the Attorney General for allowable expense calculations with respect to the sibling counseling expense.

{¶13} IT IS THEREFORE ORDERED THAT

{¶14} 1) The January 6, 2003 decision of the Attorney General is MODIFIED to render judgment in the amount of \$389.81 in favor of the applicant. However, the part of the January 6, 2003 decision which denied sibling counseling reimbursement shall be REVERSED;

{¶15} 2) The applicant's May 6, 2003 motion to pay the undisputed sum is hereby GRANTED;

{¶16} 3) This claim is referred to the Attorney General pursuant to R.C. 2743.191 for payment of the award;

{¶17} 4) The claim shall also be remanded to the Attorney General for allowable expense calculations and decision with respect to the sibling counseling expense;

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

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

CLARK B. WEAVER, SR.
Commissioner

DALE A. THOMPSON
Commissioner

ASHER W. SWEENEY
Commissioner