

[Cite as *In re Gilmore*, 2004-Ohio-947.]

**IN THE COURT OF CLAIMS OF OHIO**  
**VICTIMS OF CRIME DIVISION**

IN RE: OWEN W. GILMORE	:	Case No. V2003-40887
LOIS J. GILMORE	:	<u>ORDER OF A THREE-</u>
OWEN W. GILMORE	:	<u>COMMISSIONER PANEL</u>
Applicants	:	
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{¶1} The applicants filed a reparations application seeking reimbursement for expenses incurred in relation to the August 19, 2002 assault against Owen Gilmore. On August 1, 2003, the Attorney General denied the applicants' claim pursuant to R.C. 2743.60(D) contending that all the applicants' allowable expense had been or may be recouped from a collateral source, specifically Medicaid. The Attorney General also denied the applicants' claim for other economic loss pursuant to R.C. 2743.43.52(A). On August 11, 2003, the applicants filed a request for reconsideration asserting that they were entitled to reimbursement for the cost of Ensure (\$244.62) and prescription expense (\$154.30). On September 8, 2003, the Attorney General granted Mr. Gilmore an award in the amount of \$154.30 for prescription cost. However, the Attorney General denied the reimbursement for the Ensure expense contending that the expense does not qualify as an allowable expense item. On September 18, 2003, the applicants appealed the Attorney General's September 8, 2003 decision. On October 16, 2003, a panel of

commissioners granted the applicants' September 22, 2003 motion to pay the undisputed award amount of \$154.30. Hence, this matter came to be heard before this panel of three commissioners on December 3, 2003 at 10:35 A.M.

{¶2} Attorney Michael Falleur and an Assistant Attorney General attended the hearing and presented oral argument for this panel's consideration. Applicants' counsel stated that the applicants' claim for the cost of Ensure should be reimbursed since Dr. Straka's letter clearly indicates that the victim needed the Ensure as a meal supplement. Counsel argued that the Ensure was medically necessary and was not just a food item, since it was used to enhance the victim's healing process. Lastly, counsel stated that the Ensure provided a benefit to the victim that was not needed prior to the criminally injurious conduct and hence that cost should be reimbursed.

{¶3} The Assistant Attorney General maintained that the claim for reimbursement of the Ensure expense must be denied. The Assistant Attorney General argued, in this case, that the Ensure was meal replacement for the victim because he could not consume solid foods, in light of his broken jaw. The Assistant Attorney General asserted that the applicant incurred no additional cost by purchasing the Ensure, since the Ensure replaced the victim's normal meal. Accordingly, the Assistant Attorney General requested the claim be denied since this program does not reimburse for food items.

{¶4} R.C. 2743.51(F) states:

(F)(1) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care and including replacement costs for eyeglasses and other corrective lenses. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home,

nursing home, or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

{¶5} From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. In this case, we find that the applicants have failed to prove by a preponderance of the evidence that the Ensure expense qualifies as an allowable expense item. We note that this particular case is factually distinguishable from the cited cases of In re Casto, V02-52016tc (5-13-03), In re O'Rourke, V02-51770tc (3-17-03), In re Lewis, V02-50595jud (1-9-03), and In re Piscioneri, V02-50277jud (1-9-03). In the instant case, the victim sustained a broken jaw and was unable to consume any solid foods and hence was restricted to a liquid diet. The victim's diet of Ensure provided both nutritional value that he would have received from consuming a normal meal as well as additional nutritional supplements. Despite the victim's injury, the applicants did not incur any additional cost than what they normally would have spent had they purchased regular food items for the victim. Therefore, the September 8, 2003 decision of the Attorney General shall be affirmed.

{¶6} IT IS THEREFORE ORDERED THAT

{¶7} 1) The September 8, 2003 decision of the Attorney General is AFFIRMED;

{¶8} 2) This claim is DENIED with respect to the Ensure expense;

{¶9} 3) This order is entered without prejudice to the applicants' right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

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

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CLARK B. WEAVER, SR.  
Commissioner

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DALE A. THOMPSON  
Commissioner

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KARL H. SCHNEIDER  
Commissioner

ID #\4-dld-tad-121003

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

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To S.C. Reporter 3-2-2004