

[Cite as *In re Bauer*, 2005-Ohio-2027.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

Case No. V2004-60377

-1-

ORDER

IN RE: AUSTIN LEE BAUER

:

Case No. V2004-60377

WILLIAM AND JENNIFER BAUER

:

ORDER OF A THREE-
COMMISSIONER PANEL

Applicants

{¶1} The applicants filed a reparations application seeking reimbursement of expenses incurred with respect to an August 17, 2003 incident involving their minor son, Austin Bauer, who was shot in the ankle with a bow and arrow by a neighbor. On February 19, 2004, the Attorney General granted the applicants an award of reparations in the amount of \$57.23 for unreimbursed allowable expense. However, the Attorney General denied reimbursement for certain expenses pursuant to R.C. 2743.60(D) contending that those expenses were covered by Medicaid. On February 23, 2004, the applicants filed a request for reconsideration with respect to their moving expenses. On April 1, 2004, the Attorney General denied the applicants' claim for reimbursement of incurred expenses with respect to moving their mobile home. On April 12, 2004, the applicants filed a notice of appeal to the Attorney General's April 1, 2004 Final Decision. On May 21, 2004, the Attorney General filed a Brief asserting that pursuant to In re Webb (1990), 62 Ohio Misc.2d 3, ancillary moving expenses are not recoverable as allowable expense, as the term is defined by R.C. 2743.51(F). On June 22, 2004, the applicants filed a Brief asserting that they should be reimbursed those submitted expenses associated with moving their mobile home, since the move was necessary for the rehabilitation and care of the victim. On July 13, 2004, a panel of commissioners held a final determination in abeyance, ordered the applicants' to file an itemized supplemental memorandum of all costs associated with the move of their mobile home, and continued the matter. Hence, this matter came to be reheard before this three commissioner panel on January 12, 2005 at 10:15 A.M.

{¶2} William Bauer, applicants' counsel and an Assistant Attorney General appeared at the hearing and presented testimony, an exhibit, and oral argument for this panel's consideration. William Bauer's testimony primarily consisted of explaining and clarifying those moving

expense items and amounts contained within the applicant's January 7, 2005 Hearing Memoranda.

{¶3} Applicants' counsel stated that the Bauer's should recover all submitted expenses associated with moving their mobile home, since those costs were reasonably incurred as a result of the assault against their minor son. Counsel noted that medical documentation had been submitted, which substantiates the applicants' claim that moving was necessary for the rehabilitation and treatment of the victim. Counsel stated that unique costs were incurred in the move of the applicants' mobile home, which typically are not sustained when a person relocates to an apartment, condominium, or permanent dwelling. Counsel argued that this issue is one of first impression since In re Webb, *supra*, was a single commissioner decision that merely provided guidance with respect to ancillary moving costs and In re Hartel, V93-73216tc (5-31-95) was a panel decision that concerned closing costs as allowable expense when no medical documentation had been supplied to substantiate the applicant's claim that moving was necessary for the rehabilitation and treatment of the victim.

{¶4} The Assistant Attorney General conceded that only the \$800.00 Jacob Dexter bill and mileage for transporting the victim to and from counseling sessions should be reimbursed to the applicants. Nevertheless, the Assistant Attorney General maintained that the applicants' claim for the remaining moving expenses must be denied, since those submitted expenses do not qualify as allowable expense, as the term is defined by R.C. 2743.51(F). The Assistant Attorney General asserted that only the *actual* cost of the move, itself, may be reimbursed to the applicants since the goal is to merely reimburse the applicants for those funds incurred to separate the offender from the victim.

{¶5} R.C. 2743.51(F) states:

{¶6} “(F) 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.”

{¶7} 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. We believe that had the Bauer's been living in an apartment, condominium, or permanent dwelling, at the time of the criminally injurious conduct we would have conceded that only those expenses incurred in the actual move itself should be reimbursed to the applicants. However, since the Bauer's resided in a mobile home, which presents a unique living situation, we must consider this factor and accept the applicants as we have found them. Mr. Bauer testified in detail concerning his submitted costs associated with the move and the need for such expenses to have been incurred by him and his wife. We believe that the applicants received no benefit, other than helping their son, by relocating to the new property nor do we believe that the applicants are seeking to abuse the fund by seeking reimbursement of said expenses (especially when the applicants failed to submit other expenses involved in the move). Moreover, we note that this move was not initiated by the Bauer's since the file contains a November 20, 2003 letter from Austin Bauer's therapist, Shirley Verhey, LPCC, indicating the move was necessary for Austin's rehabilitation, treatment, and care.

{¶8} Below is the list of expenses to be reimbursed to the applicants for their moving costs:

1. Mileage to and from counseling	(Attorney General to calculate and pay)
2. McArthur Lumber & Post	\$34.98 (utility pole)
3. Carter Lumber	\$10.59 (utility)
4. Carter Lumber	\$23.13 (heating cable)
5. Carter Lumber	\$129.93 (electric)
6. Carter Lumber	\$142.64 (utilities hook-up)
7. Jaymar Quality Stone Co.	\$221.89 (stone needed to complete the move)
8. Standard Hardware & Supply Co.	\$6.07 (breaker box and meter)
9. Donahue Supply	\$396.94 (20 amp service box)
10. Jacob Dexter	\$2,700.00 (excavating for site preparation)
11. Jacob Dexter <u>footers)</u>	<u>\$800.00 (reset mobile home & aligned</u>
(exclusive to be calculated and paid	\$4,466.17 - Total reimbursement costs of mileage reimbursement by the Attorney General)

{¶9} Based on the above facts and analysis, we find that the applicants' reasonably incurred \$4,466.17 in allowable (moving) expense as a result of the criminally injurious conduct. We also note that this decision was rendered purely upon the facts of this particular case involving a mobile home. Therefore, the April 1, 2004 decision of the Attorney General shall be reversed to grant the applicants a total award in the amount of \$4,466.17. The claim shall be

remanded to the Attorney General for economic loss calculations and decision consistent with the panel's decision.

{¶10} IT IS THEREFORE ORDERED THAT

{¶11} 1) The April 1, 2004 decision of the Attorney General is REVERSED to render judgment in favor of the applicants in the amount of \$4,466.17;

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

{¶13} 3) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's decision;

{¶14} 4) 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;

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

CLARK B. WEAVER, SR.
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

JAMES H. HEWITT III
Commissioner

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

Filed 3-10-2005
Jr. Vol. 2256, Pgs. 104-109
To S.C. Reporter 4-29-2005