

[Cite as *In re Dyer*, 2005-Ohio-2586.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: SHERRY J. DYER	:	
MARY J. COPPES	:	Case No. V2004-60261
RICHARD E. DAY	:	Case No. V2004-60270
JEAN A. DAY	:	
ROXANNA L. DE BUSK	:	Case No. V2004-60288
SHEILA R. LACY-WILSON	:	Case No. V2004-60296
Applicants	:	<u>OPINION OF A THREE-</u>
	:	<u>COMMISSIONER PANEL</u>
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{¶ 1} The applicants filed reparations applications seeking reimbursement of expenses incurred with respect to the July 5, 2003 murder of Sherry Dyer. On January 7, 2004, the Attorney General denied all the applicants' claims pursuant to R.C. 2743.60(E)(1) and In re Dawson (1993), 63 Ohio Misc.2d 79 since the decedent tested positive for cocaine on the coroner's toxicology report. However, the Attorney General granted the decedent's minor son, Tyrese Finley, an award for dependent's economic loss, pursuant to R.C. 2743.60(E)(2), in the amount of \$6,666.66 for unreimbursed dependent's economic loss for the stay period between July 5, 2003 through July 5, 2005 (the Attorney General noted that the remaining balance of \$43,333.34 may be granted to Tyrese Finley after the two-year stay period expires). The

Attorney General asserts that Tyrese is the only dependent entitled to receive an award of reparations, because the decedent's other minor children (Kendra Dyer and Da'Vaughn Staley) receive collateral source benefits from Social Security that outweigh their economic loss. On February 2, 2004, the applicants filed a request for reconsideration contending that Kendra and Da'Vaughn should also receive an award for dependent's economic loss. On March 5, 2004, the Attorney General determined that no modification of the previous decision was warranted. On March 22, 2004, the applicants filed a notice of appeal to the Attorney General's March 5, 2004 Final Decision asserting that the award for dependent's economic loss should be equitably reapportioned among all the decedent's minor children. On June 17, 2004, a panel of commissioners heard the case, however decided to hold a final determination in abeyance and continued the matter to hear additional evidence. Hence, this matter came to be reheard before this panel of three commissioners on December 15, 2004 at 11:00 A.M.

{¶ 2} Roxanna DeBusk, Sheila Lacy-Wilson, applicants' counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. Sheila Lacy-Wilson testified that she was appointed guardian of Kendra Dyer's estate and that she agrees with reapportioning the \$50,000.00 award among Tyrese, Kendra, and Da'Vaughn.

{¶ 3} Maureen Moloney, an attorney, testified that she was originally appointed by Greene County Probate Court to serve as guardian ad litem for all of the decedent's minor children in March of 2003. However, Ms. Moloney advised the panel that currently she only serves as Da'Vaughn Staley's guardian ad litem as well as the guardian of his estate. Ms. Moloney testified that she agrees with reapportioning the \$50,000.00 award in order that all the

decedent's minor children receive an award. Ms. Moloney indicated that she believes reapportioning the reparations award is in the best interest of all the decedent's children.

{¶ 4} Roxanna DeBusk briefly testified that she was appointed guardian of Tyrese Finley's estate. Ms. DeBusk indicated that she also agrees with reapportioning the award, because she believes that it is in Tyrese's best interest, as well as his siblings, to participate in the fund.

{¶ 5} Applicants' counsel argued that the \$50,000.00 award should be equitably reapportioned among all the decedent's minor children. Counsel argued that the William Bell formula traditionally used by the program to calculate dependent's economic loss is inappropriate in this case, since all the dependents incurred some form of economic loss as a result of their mother's death. Counsel asserted that the panel has the authority to utilize a different method of calculating dependent's economic loss when justice requires such.

{¶ 6} The Assistant Attorney General maintained that Tyrese is the only minor dependent entitled to an award for dependent's economic loss since Kendra and Da'Vaughn have collateral sources that outweigh their economic loss. The Assistant Attorney General asserted that reapportioning the \$50,000.00 award that was only granted to Tyrese for dependent's economic loss is not in Tyrese's best interest and that Tyrese's guardian, Roxanna DeBusk, has a duty under probate law to act in only Tyrese's best interest.

{¶ 7} R.C. 2743.51(I) states:

"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.

{¶ 8} From review of the file and with full and careful consideration given to all the evidence proffered at the hearings, this panel makes the following determination. Prior to the use of the Bell formula, the court relied upon the Catherine Walker Study to calculate dependent's economic loss. The Walker Study calculated the worth of a working and non-working parent based upon economic and non-economic factors. The Walker Study provided a guideline for examining both tangible and intangible benefits rendered by a parent to a child. Therefore by following the Walker Study, each death claim involving a dependent resulted in a maximum award being granted. However sometime later, the Walker Study was rejected when the rationale of In re Eader (1982), 70 Ohio Misc. 17 was adopted by the court.

{¶ 9} In In re Eader, *supra*, Judge Baynes held that dependent's economic loss is based upon the net wages of the decedent and that R.C. 2743.51(J), the dependent's replacement services loss provision, requires evidence to demonstrate a dependent's subsequent loss, cost, and expense as a result of criminally injurious conduct. Under Eader, essentially, only those expenses actually incurred and lost by a dependent qualify as dependent's replacement services loss. Shortly after the Eader decision was rendered, the Attorney General contracted with economist William Bell to create a formula for calculating dependent's economic loss based upon R.C. 2743.51(I). Consequently, the Bell formula reflected the economic relationship between a decedent and a dependent and over the years has become the method utilized to calculate dependent's economic loss, despite the absence of statute or case law establishing the Bell formula as the required method of calculating dependent's economic loss.

{¶ 10} This panel is challenged with the task of examining the instrument that ultimately determines a dependent's eligibility to receive an award for dependent's economic loss. We conclude that it is the method of calculation that determines a dependent's ability to receive an award. In this case, we also find no reason why the Bell formula must be utilized to calculate dependent's economic loss, particularly when fiduciaries in open court encourage the court to do otherwise. This panel has the equitable power to deviate from the standard formula of calculating dependent's economic loss and substitute an alternative, reasonable, and lawful dependent's economic loss computation method, when the interest of justice requires such. In the present matter, we have considered the following factors to be relevant in recalculating an award for dependent's economic loss: 1) the total amount of economic loss sustained by each dependent; 2) the age of each dependent; 3) the relationship of the decedent to each dependent; 4) the relationship between or among each dependent; and 5) whether each legal guardian (if a

guardian is required) agrees with reapportioning an award for a specified amount to each dependent.

{¶ 11} Upon review of the information contained in the claim file, we recognize that each child has suffered some form of net economic loss as result of their mother's death, despite having received Social Security Income as a collateral source benefit. Therefore, based upon the following rationale and reasoning, we find that the \$50,000.00 maximum award shall be reapportioned.

\$ 8,448.44	the decedent's annual net salary at the time of death
<u>-\$3,420.00</u>	<u>annual collateral source benefit (SSI) received by each minor dependent</u>
\$ 5,028.44	annual net dependent's economic loss sustained by each minor dependent

Tyrese Finley	age 2.5 at the time of the criminally injurious conduct
\$ 5,028.44	annual net economic loss sustained to each minor dependent
<u>X 16 years</u>	<u>the year Tyrese reaches the age of majority (2019)</u>
\$80,455.04	Tyrese's net dependent's economic loss from 2003 - 2019

Kendra Dyer	age 9.6 at the time of the criminally injurious conduct
\$ 5,028.44	annual net economic loss sustained to each minor dependent
<u>X 8 years</u>	<u>the year Kendra reaches the age of majority (2011)</u>
\$40,227.52	Kendra's net dependent's economic loss from 2003 - 2011

Da'Vaughn Staley	age 12.8 at the time of the criminally injurious conduct
\$ 5,028.44	annual net economic loss sustained to each minor dependent
<u>X 5 years</u>	<u>the year Da'Vaughn reaches the age of majority (2008)</u>
\$25,142.20	Da'Vaughn's net dependent's economic loss from 2003 - 2008

{¶ 12} In contemplation of the above facts, we hold that the maximum award shall be reasonably and equitably apportioned among each minor dependent as follows: 1) Tyrese Finley to receive \$25,000.00 as the dependent who sustained the most amount of net economic loss as a result of his mother's death; 2) Kendra Dyer to receive \$15,000.00 as the dependent who

sustained the second most amount of net economic loss as a result of her mother's death; and 3) Da'Vaughn Staley to receive \$10,000.00 as the dependent who sustained the least amount of net economic loss as a result of his mother's death. Furthermore, this panel finds that apportioning the \$50,000.00 award among Tyrese, Kendra, and Da'Vaugh serves in the best interest of all the decedent's minor children. Therefore, the March 5, 2004 decision of the Attorney General shall be modified to award dependents' economic loss awards in accordance with the panel's findings.

JAMES H. HEWITT III
Commissioner

KARL H. SCHNEIDER
Commissioner

GREGORY P. BARWELL
Commissioner

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ORDER

IT IS THEREFORE ORDERED THAT

{¶ 13} 1) Maureen Moloney is hereby added as an applicant to Case No. V2004-60261;

{¶ 14} 2) The clerk shall note in the appearance docket and all appropriate indices that Maureen Moloney is added as an applicant to Case No. V2004-60261;

{¶ 15} 3) The March 5, 2004 decision of the Attorney General is MODIFIED to render judgment in favor of the decedent's minor dependents. The \$50,000.00 maximum award shall be apportioned accordingly: 1) Tyrese Finley to receive \$25,000.00 in unreimbursed dependent's economic loss; 2) Kendra Dyer to receive \$15,000.00 in unreimbursed dependent's economic loss; and 3) Da' Vaughn Staley to receive \$10,000.00 in unreimbursed dependent's economic loss;

{¶ 16} 4) This claim is referred to the Attorney General for payment of the awards;

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

JAMES H. HEWITT III
Commissioner

KARL H. SCHNEIDER
Commissioner

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GREGORY P. BARWELL
Commissioner

ID #\18-dld-tad-022805

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 5-25-2005

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