[Cite as *In re Rahn*, 2005-Ohio-7125.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION
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IN RE: DEBBIE L. RAHN	:	Case No. V2004-61217
DEBBIE L. RAHN	:	ORDER OF A THREE-COMMISSIONER PANEL
Applicant	:	

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{¶ 1} Debbie Rahn ("Ms. Rahn" or "applicant") filed a reparations application seeking reimbursement of expenses incurred with respect to a May 28, 2003 aggravated vehicular assault incident. On September 20, 2004, the Attorney General denied the applicant's claim pursuant to R.C. 2743.60(D) contending that all the applicant's economic loss had been or may be recouped from collateral sources, namely Medicaid, United Healthcare, and insurance settlements. On September 20, 2004, the applicant filed a request for reconsideration. On November 18, 2004, the Attorney General granted the applicant an award in the amount of $1,348.88, of which $219.41 represented allowable expense and $1,129.47 represented work loss incurred from May 29, 2003 through June 18, 2003. On December 2, 2004, the applicant filed a notice of appeal to the Attorney General's Final Decision. Hence, this matter came to be heard before this panel of three commissioners on October 6, 2005 at 10:30 A.M.

{¶ 2} The applicant, the applicant's attorney, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. Ms. Rahn testified that prior to the accident she worked at Airborne Express five days a week as a sorter, which consisted of sorting mail and lifting boxes and freight. The applicant explained that on

May 28, 2003 she was involved in an automobile accident, whereby her legs were pinned under the dashboard of her vehicle. The applicant stated that she had to be cut out of her automobile, since the entire front end of the vehicle was damaged.

{¶ 3} While at the hospital, Ms. Rahn testified that she repeatedly complained to hospital staff about the pain in her legs, however the staff was primarily concerned about her abdominal injury (the applicant had abdominal surgery a week prior to the criminally injurious conduct) and her brain tumor (the applicant had been diagnosed with a brain tumor approximately two years prior to the criminally injurious conduct). The applicant explained that she was forced to walk (barely) out of the hospital with her mother's assistance on the same day as the accident. The applicant stated that thereafter she spent the next year using a wheelchair for mobility. Ms. Rahn testified that prior to the criminally injurious conduct she had not suffered any problems with her knees or ankles since the 1980's and mid 1990's, respectively. The applicant testified that, as a result of the injuries she sustained in the accident, she underwent multiple surgeries on her ankles and knees.

{¶ 4} In addition, Ms. Rahn testified that she never returned to Airborne Express, despite her efforts. The applicant explained that in May of 2005 she again attempted to return to work at Dollar General to no avail. Ms. Rahn stated that lately her right knee has frequently begun to give out on her.

{¶ 5} Ms. Rahn also testified that, at the time of the criminally injurious conduct, she had been Medicaid eligible due to the brain tumor, however those benefits were terminated in December of 2003. The applicant also noted that her United Healthcare benefits were cancelled in 2003 when she was discharged from Airborne Express. Ms. Rahn explained that she was

denied Social Security Disability benefits in 2004, since she did not sustain sufficient injury to be entitled to such benefits.

{¶ 6} Sharon Rahn, the applicant's mother, testified concerning the changes she witnessed her daughter undergo after the criminally injurious conduct. Sharon Rahn's testimony essentially corroborated the applicant's testimony.

{¶ 7} Applicant's counsel argued that Ms. Rahn should be permitted to retain a larger portion of her settlement proceeds as pain and suffering compensation, since her net settlement grossly under compensates the applicant for her loss. Counsel noted that Dr. Grossman, the applicant's surgeon, released the applicant from work during the time period ranging from June 10, 2003 through May 24, 2004, as well as noted that 100 percent of the applicant's injuries were related to the criminally injurious conduct. Counsel contended that Dr. Grossman's opinion of the applicant's condition is more credible than Dr. Cunningham's, the Attorney General's consultant, opinion since Dr. Cunningham never treated the applicant. Lastly, counsel noted that the applicant needs ongoing therapy and care, but is currently unable to seek treatment because she does not have health insurance or a job.

{¶ 8} The Assistant Attorney General maintained that the applicant's collateral sources outweigh her economic loss and hence her claim should be denied. The Assistant Attorney General contended that the applicant received an overpayment. The Assistant Attorney General also insisted that a reasonable non economic loss figure should be 75 percent. The Assistant Attorney General also urged the panel to consider Dr. Cunningham's medical opinion concerning the applicant's percentage of injury relatedness to the criminally injurious conduct and the return to work date of June 18, 2003 instead of May 24, 2004.

{¶ 9} 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. On August 28, 2003, Dr. Noyse, the applicant's knee physician and surgeon, indicated that the applicant sustained bilateral ankle injuries, a back injury, and bilateral knee injuries as a result of the motor vehicle accident. On February 24, 2004, Dr. Grossman, the applicant's ankle physician and surgeon, indicated that 100 percent of the applicant's injuries were caused by the criminally injurious conduct and noted that the applicant was unable to work from June 18, 2003 through May 23, 2004. Dr. Grossman diagnosed the applicant as having ruptured and attenuated ligaments, achilles tendinitis, and tarsal tunnel syndrome. Based on the above, we find that 100 percent of the applicant's injuries were caused by the criminally injurious conduct and that the applicant was released from work by her physician from June 18, 2003 through May 23, 2004.

{¶ 10} The applicant bears the burden of proving, by a preponderance of the evidence, what percentage of proceeds received should be considered compensation for non economic loss (pain and suffering). Pursuant to the holding in In re Fout-Craig, V93-27851tc (2-5-99), the apportionment of a victim's non economic loss compensation involving insurance proceeds shall be determined on a case-by-case basis according to the particular facts and circumstances of the case.

{¶ 11} Based upon the Victim's Impact Statement and the testimony presented, we find that the applicant has proven, by a preponderance of the evidence, that 75 percent is a reasonable percentage to be attributable to non economic loss considering the degree of the applicant's injuries, the effects that the injuries have had, and shall continue to have on the applicant. Therefore, the November 18, 2004 decision of the Attorney General shall be affirmed.

This claim shall be remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings.

IT IS THEREFORE ORDERED THAT

1) The November 18, 2004 decision of the Attorney General is AFFIRMED;

2) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings;

3) This order is entered without prejudice to the applicant’s right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

4) Costs are assumed by the court of claims victims of crime fund.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

TIM MC CORMACK
Commissioner

ID #\8-dld-tad-101905

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

Filed 12-2-2005
Jr. Vol. 2259, Pgs. 10-14
To S.C. Reporter 1-20-2006