

[Cite as *In re Smith*, 2006-Ohio-1371.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: KAREN L. SMITH	:	Case No. V2005-80126
KAREN L. SMITH	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶ 1} Karen Smith (“applicant”) filed a reparations application seeking reimbursement of expenses incurred with respect to a 1996 through May 19, 2004 sexual abuse incident. On December 17, 2004, the Attorney General denied the claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove she was a victim of criminally injurious conduct. The Attorney General also denied the claim pursuant to R.C. 2743.60(D) contending that all the applicant's economic loss had been or may be recouped from a collateral source, namely Medicaid. On January 3, 2005, the applicant filed a request for reconsideration. On March 14, 2005, the Attorney General determined that the previous decision warranted no modification. On March 21, 2005, the applicant filed a notice of appeal to the Attorney General's March 14, 2005 Final Decision. Hence, this matter was heard before this panel of three commissioners on December 7, 2005 at 9:55 A.M.

{¶ 2} The applicant's counsel and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel's consideration. Dorothy Evans (“Ms. Evans”), M.A., M.S., R.N., L.P.C.C., the applicant's therapist, testified (via telephone) that she specializes in traumatic counseling. Ms. Evans stated that she first saw the applicant on July 16,

2004 via a referral from the Victims' Witness Program in Montgomery County. Due to her speciality, Ms. Evans indicated that she receives several referrals from the Victims' Witness Program. Ms. Evans testified that the applicant had been abused since childhood and that she was sexually abused from 1996 through May 2004 by her brother. Ms. Evans explained that prior to May 2004 the applicant and her two daughters lived with her family, which included her abusive brother. Ms. Evans testified that the applicant is unable to handle various situations due to the sexual abuse she sustained, including her daughter's issue with Bipolar Disorder. Ms. Evans stated, in her professional opinion, that the applicant would not have needed counseling outside of the sexual abuse she suffered, since all of the applicant's issues are rooted in her sexual abuse. Lastly, Ms. Evans noted that she is not a Medicaid provider.

{¶ 3} Applicant's counsel stated that the claim should be allowed based upon the testimony proffered. Counsel argued that the applicant qualifies as a victim of criminally injurious conduct. Counsel also argued that all of the applicant's counseling expenses are directly related to the criminally injurious conduct and therefore should be reimbursed to the applicant. Counsel urged the panel to consider the quality and type of services Ms. Evans provided to the applicant.

{¶ 4} The Assistant Attorney General conceded that the applicant was a victim of criminally injurious conduct, but argued that only a percentage of the applicant's counseling expenses relate to the criminally injurious conduct. The Assistant Attorney General argued that the applicant primarily discussed her daughter's issues during her counseling sessions and not her own sexual abuse. The Assistant Attorney General argued that the applicant should only be reimbursed for those counseling sessions that relate to the criminally injurious conduct.

Moreover, the Assistant Attorney General noted that the applicant failed to seek a Medicaid provider for her counseling needs.

{¶ 5} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. We find that the applicant qualifies as a victim of long term and systematic sexual abuse. We also find that the applicant incurred 100 percent reimbursable counseling expenses with Ms. Evans as a result of the criminally injurious conduct. Therefore, the March 14, 2005 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision.

IT IS THEREFORE ORDERED THAT

- 1) The March 14, 2005 decision of the Attorney General is REVERSED and judgment is entered for the applicant;
- 2) This claim is remanded to the Attorney General for economic loss calculations and decision;
- 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

LLOYD PIERRE-LOUIS
Commissioner

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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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