

[Cite as *In re Merrill-Payne*, 2006-Ohio-2168.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: MOLLY MERRILL-PAYNE : Case No. V2005-80738
MOLLY MERRILL-PAYNE : ORDER OF A THREE-
Applicant : COMMISSIONER PANEL

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{¶ 1} The applicant filed a reparations application seeking reimbursement for economic loss incurred as the result of a May 8, 2004 aggravated vehicular assault incident. On December 9, 2004, the Attorney General denied the applicant's claim pursuant to R.C. 2743.60(B), asserting that the applicant knew or should have known that the driver of the vehicle was under the influence of alcohol prior to her accepting a ride with the driver. However, on October 13, 2005, the Attorney General issued a Final Decision reversing his original position that denied the claim pursuant to R.C. 2743.60(B). The Attorney General noted that the applicant received an insurance settlement as a result of the criminal incident. Based on a variety of factors, the Attorney General determined that an appropriate apportionment amount of the insurance settlement should be 67 percent for pain and suffering and 33 percent for economic loss and the applicant was granted an award of reparations in the amount of \$1,268.88. The Attorney General also contended that the applicant had failed to prove she sustained work loss because she has failed to provide supporting documentation. On November 8, 2005, the applicant filed a notice

of appeal from the Attorney General's Final Decision. The applicant agreed she was owed the \$1,268.88 as granted by the Attorney General, but also believed her settlement was incorrectly apportioned pursuant to the holding in *In re Fout-Craig*, V93-27851tc (2-5-99), and hence requested work loss reimbursement. On December 20, 2005, the Attorney General submitted a brief where he re-evaluated his apportionment of the settlement and indicated that the correct apportionment amount should be 75 percent for non-economic and 25 percent for economic loss. Based on these new figures the Attorney General stated that the applicant should be awarded \$2,164.18 for unreimbursed allowable expense, but still maintained insufficient documentation existed to grant the applicant work loss. On January 20, 2006, the applicant filed a concurring memorandum agreeing with the Attorney General's new *Fout-Craig* analysis and recommended an award of \$2,164.18 for allowable expense. Hence, this matter came to be heard before this panel of three commissioners on January 26, 2006 at 12:05 P.M.

{¶ 2} The applicant's attorney and an Assistant Attorney General attended the hearing and presented brief comments for the panel's consideration. The applicant's counsel expressed his agreement with the apportionment of the applicant's settlement contained in the Attorney General's December 20, 2005 Brief and the payment schedule as outlined in the Attorney General's January 23, 2006 Supplemental Memorandum. Applicant's counsel also expressed his inability to prove work loss at this time and requested that he be allowed to file a supplemental compensation application in the future to prove work loss when the documentation becomes available to him. The Assistant Attorney General expressed her agreement with counsel's remarks and the hearing was concluded.

{¶ 3} From review of the file and with careful consideration given to all information presented at the hearing, we make the following determination. We agree that the applicant's settlement should be apportioned 75 percent for non-economic and 25 percent for economic loss and the providers and applicant should be paid the following amount:

Surgical Associates of Greene Count	\$1,514.31
Seiler Scharf Anesthesia	557.40
Thomas Goodall, D.O.	70.66
Molly Merrill-Payne	<u>21.81</u>
	<hr/> \$2,164.18

{¶ 4} Therefore the October 13, 2005 decision of the Attorney General shall be modified and the claim shall be remanded to the Attorney General for payment of the award. Should the applicant obtain evidence that she incurred additional unreimbursed economic loss that would be an appropriate basis for filing a supplemental compensation application.

IT IS THEREFORE ORDERED THAT

- 1) The October 13, 2005 decision of the Attorney General is MODIFIED to render judgment in favor of the applicant in the amount of \$2,164.18;
- 2) This claim is remanded to the Attorney General for payment of the award as indicated above;
- 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.

GREGORY P. BARWELL
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

RANDI OSTRY LE HOTY
Commissioner

ID #\1-drb-tad-020106

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

Filed 3-17-2006
Jr. Vol. 2259, Pgs. 199-202
To S.C. Reporter 4-14-2006

