

[Cite as *In re Casadonte*, 2006-Ohio-2807.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: DONALD J. CASADONTE : Case No. V2005-80771
DONALD J. CASADONTE : ORDER OF A THREE-
Applicant : COMMISSIONER PANEL

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{¶ 1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to a September 18, 2004 assault incident. On August 29, 2005, the Attorney General found the applicant was a victim of criminally injurious conduct and granted allowable expense in the amount of \$6,871.67. On August 31, 2005, the applicant filed a request for reconsideration. On October 31, 2005, the Attorney General issued a Final Decision modifying the initial decision. The Attorney General discovered the applicant is eligible for the Ohio Hospital Care Assurance Program (HCAP), and accordingly, expenses incurred at Mount Carmel and Riverside Methodist Hospitals are subject to a complete write-off pursuant to HCAP, therefore the applicant was granted unreimbursed allowable expense in the amount of \$2,137.56. The Attorney General also determined the expense incurred for an office visit to Dr. Balturshot at Central Ohio Neurological Surgeons was not related to the criminally injurious conduct. On November 28, 2005, the applicant filed a notice of appeal to the Attorney General's Final Decision. The applicant asserts the expense incurred for the office visit with Dr. Balturshot was related to the injuries suffered as the result of the criminal conduct. Applicant related the purpose of the visit was for Dr. Balturshot to read a MRI that had been performed on September

21, 2004 at Riverside Hospital. On January 19, 2006, the Attorney General filed a Brief. The Attorney General reconsidered his position and determined that the applicant's medical appointment on October 5, 2004 with Dr. Balturshot was related to the criminally injurious conduct and consequently, the applicant should be granted an award in the amount of \$135.00. Hence, this matter came to be heard before this panel of three commissioners on February 22, 2006 at 10:45 A.M.

{¶ 2} The attorney for the applicant and an Assistant Attorney General attended the hearing and presented brief comments for the panel's consideration. The Assistant Attorney General stated that she rested on her position stated in the January 19, 2006 Brief. The Assistant Attorney General stated the purpose of the medical appointment on October 5, 2004 was to allow Dr. Balturshot to read the results of a MRI, which was performed on September 21, 2004. The purpose of the MRI was to determine if the applicant's head injury was the result of the criminally injurious conduct or an unrelated medical problem. Even though the results of the MRI indicate the condition was unrelated to the assault, the appointment itself was necessitated by the criminal conduct. Accordingly, the office visit should be compensable. The Assistant Attorney General also noted that no award has been paid in this case and requested the panel direct payment of the full award.

{¶ 3} Lastly, Commissioner LeHoty raised an issue concerning the loss or damage to eye glasses at the time of the incident. Neither party was aware of the loss, but the attorney for the applicant indicated he would file a supplemental compensation application, if necessary, with respect to that issue.

{¶ 4} From review of the file and with careful consideration given to all information presented at the hearing, we find the October 5, 2004 appointment with Dr. Balturshot was related to the criminally injurious conduct. It is the burden of the applicant to establish by a reasonable degree of medical certainty that a medical expense is causally related to the injuries sustained at the time of the criminally injurious conduct. *In re Bailey*, V78-3484jud (8-23-82). The applicant has met his burden by a preponderance of the evidence. Furthermore, the Attorney General agrees this expense is related to the criminally injurious conduct. Accordingly, the applicant is granted an award of reparations in the amount of \$2,272.56.

IT IS THEREFORE ORDERED THAT

- 1) The October 31, 2005 decision of the Attorney General is MODIFIED to render judgment in favor of the applicant in the amount of \$2,272.56;
- 2) This claim is remanded to the Attorney General for payment of the award pursuant to R.C. 2743.191;
- 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.

RANDI OSTRY LE HOTY
Commissioner

JAMES H. HEWITT III
Commissioner

GREGORY P. BARWELL
Commissioner

ID #\2-drb-tad-022406

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

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