[Cite as *In re Thornsley*, 2006-Ohio-5139.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION
www.cco.state.oh.us

IN RE: JANET K. THORNSLEY	:	Case No. V2003-40305
JANET K. THORNSLEY	:	ORDER OF A THREE-COMMISSIONER PANEL
Applicant	:	

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{¶ 1} On June 8, 2005, Janet Thornsley ("Mrs. Thornsley" or "applicant") filed a supplemental compensation application seeking reimbursement of expenses incurred with respect to a January 28, 2001 car accident caused by an intoxicated driver.[1] On December 5, 2005, the Attorney General denied the applicant an award contending that she received an overpayment in the amount of $6,333.14, based upon an economic loss apportionment analysis. The Attorney General determined that 30 percent of the collateral source reimbursed economic loss and 70 percent

[1] On November 4, 2003, a panel of commissioners granted the applicant an award in the amount of $11,981.17, of which $1,919.09 represented allowable expense and $10,062.08 represented work loss sustained from October 2, 2001 through December 21, 2002.

reimbursed applicant's non-economic loss. On December 21, 2005, the applicant filed a request for reconsideration. On February 17, 2006, the Attorney General denied the claim once again. On March 2, 2006, the applicant filed a notice of appeal to the Attorney General's February 17, 2006 Final Decision. Hence, this matter was heard before this panel of three commissioners on June 21, 2006 at 10:50 A.M.

{¶ 2} The applicant, her attorney, and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral argument for the panel's consideration. Mrs. Thornsley (now age 45) testified that she sustained injury in a motor vehicle accident. The vehicle she was riding in was hit from behind by another automobile operated by an intoxicated driver. Mrs. Thornsley stated that she sought medical treatment for severe back pain that developed as a result of the incident. The applicant explained that her back pain increased and affected her whole life as she became unable to perform simple tasks, such as doing laundry or tying her own shoes.

{¶ 3} Mrs. Thornsley testified that prior to the criminally injurious conduct she had been employed with a local law firm where she worked approximately 30-32 hours per week (part-time), however she was soon unable to continue working as a result of

her worsening back pain. Mrs. Thornsley testified that she was referred to Dr. McLain at the Cleveland Clinic, where she sought treatment and eventually underwent back surgery in January 2003. The applicant testified that she wore a spinal packet after surgery, that she underwent rehabilitation for several months, and that she began to walk again in June 2003. Mrs. Thornsley explained that Dr. McLain placed her on work restriction (no lifting, no repetitive bending, etc.) from June 2003 through December 2003.[2] According to the applicant, the medical records from Dr. McLain's office which indicate that the applicant was released to return to work in April 2003 are incorrect. The applicant testified that she did not actually return to work with her previous employer until July 2005, even though she felt physically capable of working by January 2004.

{¶ 4} Mrs. Thornsley testified that she attempted to begin working again in July 2003, despite her physical disability, in order to help ease her family's financial hardship. The applicant stated that she placed applications with various

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[2] Mrs. Thornsley recalled that she wore a back brace daily from September 2001 through May 2003 (see Exhibits A and B).

employers (such as the Bureau of Motor Vehicles, Kroger, and Garden Center) to no avail. Mrs. Thornsley informed the panel that she had graduated from high school, but stated that she had no formal training. The applicant further noted that she listed her work restrictions on her job applications.

{¶ 5} William Thornsley ("Mr. Thornsley"), the applicant's husband, briefly testified about the impact the 2001 incident had upon him and his wife. Mr. Thornsley explained that prior to the criminally injurious conduct, his wife was an energetic woman who loved to engage in a variety of activities. However, Mr. Thornsley stated that after the incident he and his sons became responsible for the applicant's care when she was unable to perform simple tasks. According to Mr. Thornsley, his wife attempted to return to work after she began walking again; however, no one would hire her due to her work restrictions.

{¶ 6} Applicant's counsel stated that the applicant's claim for additional recovery should be allowed based upon the exhibits and testimony presented. Counsel argued that the Attorney General's economic apportionment amount is unreasonable based on the applicant's injury level and subsequent lifestyle changes. Counsel asserted that 80 percent is a more appropriate figure to apportion for non-economic loss, when considering the

applicant's past and current circumstances. Counsel noted that the applicant still has not completely recovered, and that she will never be the same person she was prior to the criminally injurious conduct. Counsel stated that the applicant suffered a severe back condition for three years (January 2001 through December 2003) before she obtained any relief. Counsel argued that but for the 2001 criminally injurious conduct incident, the applicant would not have needed to seek recoverable economic loss from this program. Counsel asserted that in light of the applicant's inability to successfully attain employment, the applicant should be granted an additional award for work loss covering the time period from January 2003 through December 2003. Counsel also argued that Dr. McLain's medical records are inaccurate since the records indicate the applicant returned to work in 2003, but in fact she did not return to work until 2005.

{¶ 7} The Assistant Attorney General maintained that the Final Decision should be affirmed. The Assistant Attorney General argued that based upon the applicant's medical records from Dr. McLain's office, the applicant was released to return to work in April 2003. The Assistant Attorney General also argued that the assigned non-economic loss apportionment amount of 70 percent is

reasonable in light of the applicant's injury and present medical condition.

{¶ 8} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, this panel makes the following determination. The applicant bears the burden of proving, by a preponderance of the evidence, what percentage of proceeds received should be considered 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.

{¶ 9} Mrs. Thornsley sustained serious injury to her back as a result of the criminally injurious conduct. The applicant suffered with chronic back pain for three years. During that three-year period, the applicant had to wear a back brace and a spinal packet, had to administer heat packs, had to undergo pain management, and attended rehabilitation sessions. The applicant suffered permanent scarring and emotional distress as a result of the incident. The applicant revealed that this incident negatively impacted her social life as well as other day to day

activities during that time period. Although Mrs. Thornsley has returned to work, her loss has not been fully recovered. 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 she has incurred additional work loss from January 1, 2003 through June 30, 2003 as a result of the criminally injurious conduct. We also find that 70 percent is a reasonable percentage attributable to non-economic loss considering the degree of the applicant's injuries and the effects that the injuries have had and continue to have on the applicant. Therefore, the February 17, 2006 decision of the Attorney General shall be reversed and the claim shall be remanded for economic loss calculations.

{¶ 10} IT IS THEREFORE ORDERED THAT

{¶ 11} The February 17, 2006 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;

{¶ 12} This claim is remanded to the Attorney General for economic loss calculations and decision that is consistent with the panel's decision;

{¶ 13} 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;

{¶ 14} Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

GREGORY P. BARWELL
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 Pickaway County Prosecuting Attorney and to:

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