

[Cite as *In re Miller*, 2007-Ohio-2268.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: MADELINE W. MILLER

□ □

Case No. V2006-20780

MADELINE W. MILLER

□ □

Commissioners:

Applicant

□ □

Randi Ostry LeHoty, Presiding

Gregory P. Barwell

James H. Hewitt III

□ □

ORDER OF A THREE-

COMMISSIONER PANEL

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{¶1} Madeline Miller (“applicant” or “Mrs. Miller”) filed a reparations application seeking reimbursement of expenses incurred with respect to a July 22, 2005 home invasion incident. On June 9, 2006, the Attorney General granted the applicant an award in the amount of \$476.59 for unreimbursed allowable expense. On June 16, 2006, the applicant filed a request for reconsideration contending that she incurred storage fees as a result of the criminally injurious conduct. On July 27, 2006, the Attorney General determined that the previous decision warranted no modification asserting that storage fees do not qualify as allowable expense as the term is defined under R.C. 2743.51(F). On August 17, 2006, the applicant filed a notice of appeal to the Attorney General’s July 27, 2006 Final Decision. On November 15, 2006 at 11:05 A.M., this matter was heard before this panel of three commissioners.

{¶2} The applicant, via telephone, applicant’s counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel’s consideration. Mrs. Miller (age 62) briefly testified that in July 2005 she and her husband were the victims of a home invasion. Mrs. Miller stated that she was transported to Mt. Carmel East Hospital by emergency medical services after suffering a number of injuries and a heart attack as a result of being threatened and assaulted with a gun. The applicant indicated that the offenders stole her purse, which contained her medications, checkbook, identification, and various other important items. The applicant explained that she remained hospitalized for several days, after which she and her husband moved in with her stepson. Mrs. Miller testified that her family physician, Dr. Bellin, advised her not to return to her apartment after the burglary to avoid the risk of suffering another heart attack. The applicant explained that she had to vacate her apartment before the beginning of the month to avoid being charged August rent and hence she

had to quickly place her and her husband's belongings in storage until they had the opportunity to locate another apartment. Mrs. Miller related that she and her husband resided with her stepson for approximately two or three months before renting a new apartment.

{¶3} Applicant's counsel stated, after hearing the applicant's testimony, that the applicant should be reimbursed for the three months (August through October 2005) of storage fees she incurred when she and her husband resided with her stepson. Counsel also stated that the applicant should be reimbursed for any moving expenses. Counsel asserted that Dr. Bellin's recommendation to the applicant that she not return to her apartment is more than sufficient medical proof that the applicant medically needed to move.

{¶4} The Assistant Attorney General maintained that under R.C. 2743.51(F) storage fees do not qualify as allowable expense and hence the claim for such reimbursement should be denied. The Assistant Attorney General argued that the applicant's incurred storage fees were not reasonably needed for her medical care. The Assistant Attorney General stated that the applicant failed to present sufficient medical evidence to show a medical necessity for relocating. The Assistant Attorney General asserted that Dr. Bellin's note is insufficient proof that the applicant needed to move for rehabilitative or treatment purposes.

{¶5} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, this panel finds that the applicant reasonably incurred storage fees for three months and moving expenses as a result of the criminally injurious conduct. The applicant and her husband are an elderly couple who suffered physical and mental injuries as a result of a home invasion. Neither the applicant nor her husband is in a position to adequately protect themselves should the intruders return. The applicant's family physician advised the

applicant to relocate and we find that evidence to be sufficient in light of the circumstances of this case. Therefore, the July 27, 2006 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision.

{¶6} IT IS THEREFORE ORDERED THAT

{¶7} 1) The applicant's November 2, 2006 motion for telephone testimony is hereby GRANTED;

{¶8} 2) The July 27, 2006 decision of the Attorney General is REVERSED and judgment is rendered for the applicant;

{¶9} 3) This claim is referred to the Attorney General for economic loss calculations and decision;

{¶10} 4) 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;

{¶11} "5) Costs are assumed by the court of claims victims of crime fund.

RANDI OSTRY LE HOTY
Presiding Commissioner

GREGORY P. BARWELL
Commissioner

JAMES H. HEWITT III
Commissioner

ID #A1-dld-tad-120506

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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