

[Cite as *In re Myers*, 2007-Ohio-3483.]

**IN THE COURT OF CLAIMS OF OHIO**

**VICTIMS OF CRIME DIVISION**

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IN RE: KATHERINE L. MYERS	:	Case No. V2007-90030
KATHERINE L. MYERS	:	Commissioners:
Applicant	:	Gregory P. Barwell, Presiding
	:	Thomas H. Bainbridge
	:	Karl C. Kerschner
_____	:	
_____	:	<u>ORDER OF A THREE-</u>
	:	<u>COMMISSIONER PANEL</u>
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{¶1} Katherine Myers (“applicant” or “Mrs. Myers”) filed a reparations application seeking reimbursement of expenses incurred with respect to a September 10, 2005 assault incident. On September 25, 2006, the Attorney General granted the applicant an award totaling \$246.10 in unreimbursed allowable expense. On October 24, 2006, the applicant filed a request for reconsideration. On December 20, 2006, the Attorney General modified the previous decision to grant the applicant an award totaling \$271.10 instead of \$246.10. However, the Attorney General denied certain expenses pursuant to R.C. 2743.60(D) and R.C. 2743.52(A). On January 8, 2007, the applicant filed a notice of appeal to the Attorney General’s December 20, 2006 Final Decision. On January 19, 2007, the applicant filed a motion to pay the undisputed award. On

January 29, 2007, the Attorney General filed a motion to dismiss the January 8, 2007 appeal. On February 16, 2007 the panel issued an order that held the Attorney General's January 29, 2007 motion to dismiss in abeyance, set the matter to be addressed at a good cause hearing on April 5, 2007, and granted the applicant's January 19, 2007 motion to pay the undisputed award amount (\$271.10). On April 5, 2007 at 10:30 A.M., this matter was heard before this panel of three commissioners.

{¶2} The pro se applicant, via telephone, and an Assistant Attorney General attended the hearing and presented testimony and brief comments for the panel's consideration. Mrs. Myers testified that after the assault she needed assistance with the care of her two-year-old daughter. Mrs. Myers stated that her best friend and neighbor, Mikel Davis ("Ms. Davis") babysat for her during her two-week recovery period. Mrs. Myers also stated that the family paid Ms. Davis a total of \$200.00 (\$100.00 per week) for her services. Mrs. Myers explained that initially Ms. Davis refused the money because they were friends, but eventually agreed and accepted the money in exchange for the child care services she provided.

{¶3} The Assistant Attorney General conceded that the Erie Surgical Associates expense totaling \$179.00 should be reimbursed to the applicant. However, the Assistant Attorney General maintained the applicant failed to submit sufficient proof that she incurred replacement services loss, because the applicant testified that the \$200.00 was a gift to Ms. Davis for her services.

{¶4} From review of the file and with full and careful consideration given to all the information presented at the hearing, we find that the applicant incurred additional

allowable expense with Erie Surgical Associates totaling \$179.00 and replacement services loss totaling \$200.00.

**{¶5}** Revised Code 2743.51(H) states:

“(H) ‘Replacement services loss’ means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income, but for the benefit of the person's self or family, if the person had not been injured.”

**{¶6}** Mrs. Myers testified that after the assault she was physically unable to care for her two-year-old daughter and hence needed child care assistance. Mrs. Myers’ testimony is corroborated by a letter dated October 12, 2005 from her physician, Dr. Douglas Hoy. Dr. Hoy states in the letter that the applicant was evaluated on September 12, 2005 after an altercation with her neighbor. Dr. Hoy related that the applicant sustained a concussion, a fractured clavicle, and a neck sprain as a result of the incident. Dr. Hoy stated that he treated the applicant’s pain with muscle relaxers and narcotic pain medication. Dr. Hoy reported the applicant’s disability period ranged from September 10, 2005 through September 24, 2005.<sup>1</sup> The file contains a letter and a handwritten receipt dated September 25, 2005 from Ms. Davis indicating the applicant paid her \$200.00 for her services. See *In re Evans*, V01-32003tc (11-30-01). Furthermore, we note that Ms. Davis had no legal obligation to provide any services to the applicant and hence we conclude that a quasi-contractual obligation for payment was created. See *In re Myers*, V95-53620tc (5-26-99). Based upon the applicant’s testimony and documents contained in the claim file, we find that the December 20, 2006 decision of the Attorney General shall be modified to award

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<sup>1</sup>See the July 18, 2006 Medical Information Report.

\$379.00 (\$179.00 + \$200.00)<sup>2</sup> to the applicant as unreimbursed allowable expense and replacement services loss.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} 1) The Attorney General's January 29, 2007 motion to dismiss is hereby DENIED;

{¶9} 2) The December 20, 2006 decision of the Attorney General is MODIFIED to render judgment in favor of the applicant in the amount of \$379.00;

{¶10} 3) This claim is referred to the Attorney General pursuant to R.C. 2743.191 for payment of the award;

{¶11} 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;

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

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GREGORY P. BARWELL  
Presiding Commissioner

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<sup>2</sup>On February 16, 2007, the panel issued an order granting the applicant's January 19, 2007 motion to pay the undisputed award totaling \$271.10.

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THOMAS H. BAINBRIDGE  
Commissioner

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KARL C. KERSCHNER  
Commissioner

ID #\9-dld-tad-041207

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

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To S.C. Reporter 7-6-2007

Case No. V2007-90030

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ORDER