

[Cite as *In re Preston*, 2007-Ohio-4703.]

## Court of Claims of Ohio

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### Victims of Crime Division

The Ohio Judicial Center

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IN RE: CHARITY (POWELL) PRESTON

CHARITY (POWELL) PRESTON

(V1991-91837)  
Applicant

Case No. V2006-21140

Commissioners:  
Karl C. Kerschner, Presiding  
Thomas H. Bainbridge  
Tim McCormack

#### ORDER OF A THREE- COMMISSIONER PANEL

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{¶1} On May 30, 2006, the applicant filed a supplemental compensation application seeking reimbursement of expenses incurred with respect to a May 22, 1991 shooting incident involving her ex-husband. On July 31, 2006, the Attorney General denied the claim because the applicant failed to file a supplemental compensation application within five years of the last decision (which was February 4, 1999). On

September 6, 2006, the applicant filed a request for reconsideration. On October 11, 2006, the Attorney General denied the claim once again. On November 22, 2006, the applicant filed a notice of appeal to the Attorney General's October 11, 2006 Final Decision. At 10:20 A.M. on June 7, 2007, this matter was heard by this three commissioner panel.

**{¶2}** Neither the applicant nor anyone on her behalf appeared at the hearing. An Assistant Attorney General attended the hearing and presented brief comments for the panel's consideration. The Assistant Attorney General summarized the case and reiterated her position to deny the claim. The Assistant Attorney General asserted that the applicant's health conditions are not severe enough to warrant tolling the statute. After a brief discussion of the matter, the panel chair concluded the hearing.

**{¶3}** Revised Code 2743.68 states:

A claimant may file a supplemental reparations application in a claim if the attorney general, a court of claims panel of commissioners, or judge of the court of claims, within five years prior to the filing of the supplemental application, has made any of the following determinations:

- (A) That an award, supplemental award, or installment award be granted;
- (B) That an award, supplemental award, or installment award be conditioned or denied because of actual or potential recovery from a collateral source;
- (C) That an award, supplemental award, or installment award be denied because the claimant had not incurred any economic loss at that time.

**{¶4}** From review of the file and with full and careful consideration given to all the evidence presented at the hearing, we find that the applicant's claim shall be allowed. Based upon the medical documentation in the file, the applicant suffers from

severe medical conditions resulting from the criminally injurious conduct. For example, the claim file includes a November 11, 2006 letter from Dr. Edward Jones indicating that he has treated the applicant since June 5, 2006 and that the applicant's psychiatric condition in regard to depression and Post Traumatic Stress Disorder is worsening. There is also a March 22, 2007 letter from Dr. Alisa Nance, the applicant's longtime physician. In the letter, Dr. Nance indicated that the applicant "sustained a close range gunshot wound to her abdomen from her former husband \* \* \* and since that time she has suffered from the debilitating incapacity of low back pain from a shattered spine, chronic bowel problems, post traumatic stress disorder, and short-term memory loss. She also has bipolar disease and has had more difficulty controlling those symptoms. Ms. Preston is now medically and mentally disabled and unable to work due to these conditions."

{¶15} Based upon the applicant's medical conditions<sup>1</sup> and the court's ability to exercise equitable powers,<sup>2</sup> we find that the October 11, 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.

{¶16} IT IS THEREFORE ORDERED THAT

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

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<sup>1</sup>See *In re Gaines* (1993), 63 Ohio Misc. 2d 173 and *In re Carmany*, V98-60228jud (10-4-00).

<sup>2</sup>See *In re Ross*, V83-51171jud (6-4-84), *In re Vasi*, V87-78538tc (3-10-89), and *In re Thomas*, V78-4048tc (11-20-98).

{¶8} 2) This claim is remanded to the Attorney General for total economic loss calculations and decision;

{¶9} 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;

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

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KARL C. KERSCHNER  
Presiding Commissioner

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THOMAS H. BAINBRIDGE  
Commissioner

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TIM MC CORMACK  
Commissioner

ID #10-dld-tad-061307

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

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