

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: TERRELL A. CANNADY

Case No. V2007-90251

TERRELL A. CANNADY

Commissioners:

Lloyd Pierre-Louis, Presiding

Clarence E. Mingo II

Randi Ostry LeHoty

Applicant

ORDER OF A THREE-
COMMISSIONER PANEL

{¶ 1} On October 27, 2003, the applicant, Terrell Cannady, filed a reparations application as the result of being shot on September 13, 2003. On June 17, 2004, the Attorney General issued a Finding of Fact and Decision finding that the applicant qualified as a victim of criminally injurious conduct and granting him an award in the amount of \$1,884.40, reimbursement for work loss incurred from September 13, 2003 to December 11, 2003. On August 5, 2004, the applicant submitted a supplemental compensation application which resulted in the Attorney General granting him an additional award in the amount of \$6,797.73 on October 15, 2004. This award represented work loss for the period September 14, 2003 to October 31, 2004. On January 3, 2005, the applicant filed a second supplemental compensation application and on September 6, 2005, the Attorney General granted him an award in the amount of \$3,556.15 for additional work loss. On August 9, 2006, the applicant filed another supplemental compensation application seeking an award for additional work loss. On December 7, 2006, the Attorney General rendered a Finding of Fact and Decision denying the applicant's claim for additional work loss based on the Attorney General's investigation that revealed that the applicant and his three children have been receiving Social Security benefits since May 1, 2004. Accordingly, the Attorney General asserts

that the applicant has received an overpayment in the amount of \$11,941.89. The Attorney General ordered the applicant to repay this amount. On January 4, 2007, the applicant filed a request for reconsideration. On March 5, 2007, the Attorney General issued a Final Decision wherein it modified the decision and found that the applicant received an overpayment in the amount of \$312.83. On April 2, 2007, the applicant filed a notice of appeal from the March 5, 2007 Final Decision of the Attorney General.

{¶ 2} On June 21, 2007, a panel of commissioners consisting of Commissioners Clarence E. Mingo II, Gregory P. Barwell, and Randi Ostry LeHoty conducted a hearing in this matter. At the conclusion of the hearing, the panel issued an order continuing the hearing until October 17, 2007 at 10:00 A.M. The panel required the applicant to submit a brief detailing the extent of his work capabilities and accompanied by medical documentation. The applicant was also required to list all economic loss he was seeking and to submit supporting documentation. The Attorney General was required to update calculations for all economic loss incurred between the period September 13, 2003 through September 30, 2007. The Attorney General was also required to supply a breakdown of the total amount that each person in the applicant's household has received in Social Security benefits since September 2003.

{¶ 3} On July 19, 2007, Michael Falleur was appointed assigned counsel for the applicant.

{¶ 4} On October 17, 2007, a hearing was held before Commissioners Clarence E. Mingo II, Gregory P. Barwell and Randi Ostry LeHoty. An Assistant Attorney General requested a continuance of the hearing and the continuance was granted. On January 31, 2008, a panel of commissioners granted a continuance of the hearing until April 16, 2008 at 10:30 A.M.

{¶ 5} On April 2, 2008, Assistant Attorney General Amy O'Grady submitted a brief wherein it was the Attorney General's position that Social Security benefits received by the applicant's children do not constitute a collateral source that should offset the applicant's work loss since the children were not residing with the applicant at the time these Social Security benefits were received. Accordingly, the Attorney General now contends that the applicant should receive an award for work loss in the amount of \$2,934.82. The applicant filed a reply memorandum expressing his concurrence with the Attorney General's position. Hence, a hearing was held before this panel of commissioners on April 16, 2008 at 10:15 A.M.

{¶ 6} The applicant's counsel, Michael Falleur and Assistant Attorney General Amy O'Grady attended the hearing and offered brief comments for the panel's consideration.

{¶ 7} Assistant Attorney General O'Grady related that after an investigation was conducted it was revealed that the Social Security benefits received by the children were not being used to offset the applicant's child support obligation. Accordingly, Ms. O'Grady argued that these benefits should not be considered a readily available collateral source to offset the applicant's work loss. Ms. O'Grady related that work loss for the applicant was able to be calculated until December 31, 2005. Ms. O'Grady stated that even though the June 21, 2007 order of the panel required economic loss to be calculated through September 30, 2007, the Attorney General's office had not received the applicant's 2006 or 2007 tax returns, so additional calculations were not possible. Accordingly, additional work loss should be requested with the use of a supplemental compensation application. Furthermore, all medical expenses incurred were reimbursed by Medicaid, a readily available collateral source. Finally, Assistant Attorney General O'Grady requested that the applicant be granted an additional award

for work loss in the amount of \$2,934.82 and that the claim be remanded to the Attorney General's office for payment. The applicant's attorney expressed his agreement with the Assistant Attorney General's recommendation.

{¶ 8} From review of the file and with full and careful consideration given to all the information presented at the hearing we find the Attorney General's Final Decision of March 5, 2007 should be reversed and the applicant should be granted an award of reparations in the amount of \$2,934.82.

{¶ 9} IT IS THEREFORE ORDERED THAT

{¶ 10} 1) The March 5, 2007 decision of the Attorney General is REVERSED and judgment is rendered for the applicant;

{¶ 11} 2) This claim is remanded to the Attorney General for payment of the award in the amount of \$2,934.82;

{¶ 12} 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;

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

LLOYD PIERRE-LOUIS
Presiding Commissioner

CLARENCE E. MINGO II
Commissioner

RANDI OSTRY LE HOTY
Commissioner

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

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To S.C. Reporter 8-20-2008