



## Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center  
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Columbus, OH 43215  
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[www.cco.state.oh.us](http://www.cco.state.oh.us)

IN RE: H. N. B.

KATHLENE BURGESS

Applicant

Case No. 2012-70173 VI

Commissioners:

Anderson M. Renick, Presiding

Daniel R. Borchert

Holly True Shaver

### ORDER OF A THREE COMMISSIONER PANEL

- {¶1} On June 22, 2010, applicant, Kathlene Burgess filed a compensation application as the result of injuries sustained by H.N.B. as the result of criminal conduct. On October 22, 2010, the Attorney General issued a finding of fact and decision determining that H.N.B. has met the jurisdictional requirements to qualify to receive an award of reparations. The applicant was granted an award in the amount of \$123.69 which represented reimbursement of medical expenses.
- {¶2} On January 19, 2012, applicant submitted a supplemental compensation application seeking an award for counseling expenses. On February 2, 2012, the Attorney General issued a finding of fact and decision based on the supplemental compensation application. The Attorney General argued that the counseling expenses were not related to the March 17, 2006 criminally injurious conduct. On February 6, 2012, applicant filed a request for reconsideration. On April 5, 2012, the Attorney General rendered a Final Decision finding no reason to modify the decision issued on February 2, 2012. On April 23, 2012, applicant filed a notice of appeal from the April 5, 2012 Final Decision of the

Attorney General. On October 16, 2012, the parties filed a joint motion to remand the case to the Attorney General's office for payment of \$7,982.50 to the applicant. On October 18, 2012, a panel of commissioners issued an order reversing the Attorney General's decision of April 5, 2012 and remanding the claim to the Attorney General for payment of \$7,982.50 to applicant.

{¶3} On January 2, 2013, applicant filed a supplemental compensation application on behalf of H.N.B. On April 26, 2013, the Attorney General issued a finding of fact and decision acknowledging that \$8,106.19 has already been paid to applicant and granting an additional award in the amount of \$143.46. Applicant's claims for additional counseling expense, travel and mileage expenses were denied. On May 13, 2013, applicant submitted a request for reconsideration with a demand that the undisputed portion of the award be paid. On June 11, 2013, the Attorney General rendered a Final Decision. The Attorney General determined that applicant had incurred additional mileage expense which totalled \$1,460.92. However, applicant's claim for reimbursement of out-of-town food expenditures was denied. On June 13, 2013, applicant filed a notice of appeal from the June 11, 2013 Final Decision of the Attorney General and a request to pay the undisputed award of \$1,460.92.

{¶4} On July 3, 2013, a commissioner of the Court of Claims issued an order directing the Attorney General to pay the undisputed award of \$1,460.92.

{¶5} On January 30, 2014, a hearing was held before this panel of commissioners. Attorney Michael Falleur appeared on behalf of applicant, while Senior Assistant Attorney General Matthew Hellman represented the state of Ohio.

{¶6} In opening statement, applicant asserted that this appeal is based solely on meal expenses incurred outside of the state of Ohio when visiting H.N.B. at a medical treatment center in Indiana. These visits were of a social and medical nature. Some visits resulted in passes given to the family to dine with H.N.B. so that the family could subsequently report to the medical staff on the socialization progress

that H.N.B. was making. Applicant also related it is a three hour drive one-way to visit H.N.B.'s treatment facility. Applicant listed a number of dates when travel, overnight accommodations and meals were required.

{¶7} The Attorney General conceded that travel and mileage expenses were reasonable and the only dispute is over the meal expenses. The Attorney General argues that the food expenses are daily living expenses which are not compensable under the program.

{¶8} Both counsel cite *In re Piscioneri*, V2002-50277tc (9-4-02) aff'd jud (1-9-03) and *In re Lewis*, V2002-50595tc (9-4-02) aff'd jud (1-9-03) in favor of their respective arguments.

{¶9} *Piscioneri* involved an applicant who traveled to Columbus from Macedonia, Ohio when she learned her son was the victim of a home invasion. The applicant stayed with the victim during his hospitalization from September 18, through September 21, 2001. A panel of commissioners in reversing the decision of the Attorney General found the applicant incurred the following compensable expenses:

{¶10} "(1) mileage from Macedonia to Columbus (twice), (2) mileage from Columbus to Macedonia, (3) hospital to hospital mileage (round trip), (4) hotel accommodations and (5) all food and clothing for the victim, applicant and applicant's minor daughter. We find the applicant's expense for her minor daughter to be reasonable since she could not be left alone."

{¶11} In *Lewis*, the applicant was informed by police that her son had been shot. She immediately left Macedonia and traveled to Columbus. Upon her arrival she spent the next four days living with, caring for, and transporting her son to medical providers. A panel of commissioners in reversing the decision of the Attorney General found the following expenses were compensable:

{¶12} "(1) mileage from Macedonia to Columbus (twice), (2) mileage from Columbus to Macedonia, (3) hospital to hospital mileage (round trip), (4) all food, (5) all

clothing, and (6) Mrs. Lewis' wage loss."

- {¶13} While applicant argues these cases support her position for reimbursement of food, the Attorney General contends that these cases allow compensation for food only in emergency situations, are distinguishable from the case at bar, and offer no precedential value to his panel.
- {¶14} The Attorney General asserted that this panel should rely on the holdings in *In re Khourie* V2010-52729tc (8-25-11), 2011-Ohio-7074 and *In re Gilmore* V2003-40887tc (1-29-04), 2004-Ohio-947.
- {¶15} In *Khourie* the victim sustained a broken jaw as the result of an assault. The applicant sought an award for the purchase of Ensure, a nutritional supplement. A panel in denying applicant's claim and affirming the decision of the Attorney General found no medical support for the purchase. The expense was a normal living expense not compensable under the program.
- {¶16} In *Gilmore* the victim was assaulted which resulted in a broken jaw. Since the victim was restricted to a liquid diet the applicant purchased Ensure. In denying applicants' claim a panel of commissioners stated:
- {¶17} "Despite the victim's injury, the applicants did not incur any additional cost than what they normally would have spent had they purchased regular food items for the victim."
- {¶18} The Attorney General contends any food purchases made by H.N.B.'s family when visiting him should be considered normal living expenses and accordingly, are not compensable.
- {¶19} Finally, the Attorney General contends there are no standards in determining what is reasonable for meal expenses or how far must one travel to be reimbursed for meals. When questioned about the standard used to determine the reasonableness of hotel expenses, which were already reimbursed, no response could be elicited. However, the Attorney General maintains that money used to purchase food at home should have been used to purchase food

while traveling, therefore, the applicant suffered no economic detriment.

{¶20} Whereupon, the hearing was concluded.

{¶21} Applicant later submitted an affidavit revealing H.N.B. resided in the treatment facility from September 22, 2011 to December 22, 2011. Applicant averred the family participated in education programs at the treatment facility, usually on Saturday mornings to aid the victim in his recovery. Finally, as part of the treatment program, passes were earned which allowed the victim to leave the facility to eat with his family. These passes were “utilized to help facilitate family re-unification.”

{¶22} R.C. 2743.51(F)(1) in pertinent part states:

"Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care and including replacement costs for hearing aids; dentures, retainers, and other dental appliances; canes, walkers, and other mobility tools; and eyeglasses and other corrective lenses."

{¶23} From review of the claim file and with full and careful consideration given to the arguments of counsel, we find the food expenses incurred by H.N.B.'s family to visit him while at the treatment facility are an allowable expense under R.C. 2743.51(F)(1). We reach this determination based upon the following factors: 1) the victim was under the age of 10; 2) the family had to travel three hours in one direction to visit H.N.B.; and 3) the family participated in the remedial care and treatment of H.N.B. by attending education programs and utilizing passes so H.N.B. could spend time with and eat meals with his family. The Attorney General has already compensated the applicant for hotel and mileage expenses, and upon review of the meal expenditures this panel finds those expenses were reasonable.

{¶24} Therefore, the June 11, 2013 decision of the Attorney General is reversed in

part.

IT IS THEREFORE ORDERED THAT

- 1) Applicant's January 27, 2014 motion to participate by telephone is GRANTED;
- 2) The June 11, 2013 decision of the Attorney General is REVERSED with respect to reimbursement of meal expenses;
- 3) This case is remanded to the Attorney General for calculation of allowable food expenses incurred for trips to Indiana to visit H.N.B.;
- 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;
- 5) Costs are assumed by the court of claims victims of crime fund.

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ANDERSON M. RENICK  
Presiding Commissioner

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DANIEL R. BORCHERT  
Commissioner

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HOLLY TRUE SHAVER  
Commissioner

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