



Court of Claims of Ohio

Victims of Crime Division

The Ohio Judicial Center
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IN RE: AUSTIN THORNTON

ANGELA THORNTON

KEVIN THORNTON

Applicants
Case No. 2014-00477 VI

Commissioners:
Daniel R. Borchert, Presiding
Anderson M. Renick

ORDER OF A TWO- COMMISSIONER PANEL

{¶1} On August 8, 2013, applicant, Angela Thornton, filed a compensation application for reimbursement of expenses she incurred as the result of injuries that her son, Austin Thornton, sustained from an assault which occurred on April 21, 2013. Applicant Kevin Thornton is Austin's father.

{¶2} On September 19, 2013, the Attorney General issued an emergency award in the amount of \$2,000. On February 4, 2014, the Attorney General issued a finding of fact and decision determining that applicants were entitled to an award of reparations totaling \$9,488.08. However, the Attorney General denied Angela's claim for lost wages based upon the finding that she was not employed at the time of the criminally injurious conduct.

{¶3} On February 14, 2014, applicant submitted a request for reconsideration. On April 17, 2014, the Attorney General issued a Final Decision, determining that there was no reason to modify the initial decision.

{¶4} On May 15, 2014, applicant filed a notice of appeal from the April 17, 2014 Final Decision of the Attorney General. A hearing was held before this panel of commissioners on November 20, 2014. Applicant Angela Thornton and her attorney,

Michael Falleur, attended the hearing while Associate Assistant Attorney General Melissa Montgomery represented the state of Ohio.

{¶5} Prior to the commencement of the hearing, the parties were informed that Commissioner True Shaver took ill and the hearing would be conducted by the two remaining commissioners. The parties expressed no objection and the hearing proceeded.

{¶6} Applicant testified that, at the time of the criminally injurious conduct, she was in the process of changing jobs and that she had quit her job as a factory worker to return to her previous employment as a hair stylist. Applicant explained that she had been preparing to return to school and that working as a hair stylist provided her with a flexible schedule, which improved her chance for success as a student. According to applicant, she would have begun working at Great Clips in Urbana, Ohio, on Monday April 21, 2013, the day after the criminally injurious conduct. Applicant testified that she remained with her son at both the hospital and the rehabilitation institution where he was treated before he was released on May 22, 2013 to continue his recovery at applicant's home.

{¶7} Applicant related that Austin's head injuries were so severe that he was unable to walk or feed himself and that he had trouble speaking. As a consequence of his injuries, Austin needed assistance with his major life activities. However, the care-giver who was hired to help Austin had trouble communicating with him, causing Austin to become frustrated and angry. Applicant informed Austin's neurologist, who determined that it was in Austin's best interest to have family members care for him. Applicant testified that she provided constant care for Austin, including providing meals, driving him to and from therapy appointments, and working with him during prescribed memory exercises. Under applicant's care, Austin's condition improved such that he no longer needed therapy after September 27, 2013, at which time he began living with his father, allowing applicant to return to work.

{¶8} The Attorney General contends that legal authority cited in applicant's brief, *In re Lyon*, 36 Ohio Misc.2d 22 (Ct. of Cl.1987), does not apply in this case inasmuch as

applicant was not employed at the time of the criminally injurious conduct. In *In re Lyon*, the court found that, under the unique circumstances of that case, applicant's lost wages incurred as a result of her curtailed work schedule did constitute an allowable expense, as defined in R.C. 2743.51(F).

{¶9} R.C. 2743.51(F) provides, in relevant part:

- a) “(1) ‘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 ***”

{¶10} There is no question that Austin required assistance after his release from the rehabilitation unit on May 22, 2013 and that such assistance would be reimbursed as an allowable expense had the service been performed by professional nursing staff. The panel finds that Dr. McCormick's recommendation that it was in Austin's best interest for him to be cared for by a family member is persuasive. Dr. McCormick states in his letter that Austin “responded more positively to family members, especially his mother, than to nursing and medical staff (strangers).” Dr. McCormick explained that “it is not unusual for patients to ‘do more’ for people they know.”

{¶11} Applicant was credible during her testimony that she had accepted a job offer with Great Clips, which she subsequently declined after the criminally injurious conduct. Furthermore, applicant's employment history of working at Great Clips both prior to and immediately after caring for Austin is persuasive evidence that she would have been employed, but for the need to care for Austin. Therefore, the panel concludes that applicant's decision to provide care to Austin was reasonable and that she incurred wage loss for the period May 22, 2013 to September 26, 2013. However, applicant is not entitled to wage loss for the period when Austin was being treated in a hospital and rehabilitation unit. See *In re Krieg*, V78-3680jud (4-6-81).

{¶12} Inasmuch as applicant suggests in her brief that “her rate of pay be deemed minimum wage for eight hours per day for the 127 day” period, May 22, 2013 to September 26, 2013, there is no need to consider another basis. *Id.* (finding that the

court did not need to calculate the basis for the rate of pay in determining a request for reimbursement for services provided by a lay person as an allowable expense when such cost was clearly less than the cost of services by a professional.)

{¶13} From review of the case file and with full and careful consideration given to the testimony and information presented at the hearing, we find that applicant has proved by a preponderance of the evidence that she incurred wage loss as a result of her efforts to care for her son following the criminally injurious conduct. For the reasons stated above, the panel finds that applicant is entitled to wage loss for the period May 22, 2013 to September 26, 2013. Accordingly, the April 17, 2014 decision of the Attorney General shall be reversed.

IT IS THEREFORE ORDERED THAT

{¶14} Applicant's September 29, 2014 motion for leave to file her brief is GRANTED;

{¶15} The April 17, 2014 decision of the Attorney General is REVERSED to render judgment in favor of applicant on her wage loss claim for the period May 22, 2013 to September 26, 2013;

{¶16} This claim is remanded to the Attorney General for economic loss calculation and payment of the award in accordance with this order;

{¶17} This order is entered without prejudice to applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

{¶18} Costs are assumed by the court of claims victims of crime fund.

DANIEL R. BORCHERT
Presiding Commissioner

ANDERSON M. RENICK
Commissioner

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

Filed 1/14/15
Sent to S.C. Reporter 3/7/16