

# Court of Claims of Ohio

## Victims of Crime Division

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IN RE: HERBERT HILL

LINDA MONEGAN-HILL

Applicant  
Case No. 2014-00853 VI

Magistrate Daniel R. Borchert

### DECISION OF THE MAGISTRATE

{¶1} On May 21, 2014, applicant, Linda Monegan-Hill, filed a compensation application as the result of the death of Mr. Hill on February 1, 2014. Applicant's application notes that Mr. Hill was the victim of a sexual assault on January 18, 2008. Applicant submitted Mr. Hill's death certificate which indicated the manner of death was natural, caused by respiratory failure and cerebrovascular accident ("CVA").

{¶2} On August 20, 2014, the Attorney General issued a finding of fact and decision denying applicant's claim for an award of reparations. All Mr. Hill's medical expenses were paid by Medicaid, a readily available collateral source. Applicant's claims for lost wages, counseling, evidence replacement, travel expenses, and crime scene cleanup were also denied since applicant presented no evidence she incurred these expenses. Finally, applicant's claim for reimbursement of funeral expense and defendant's economic loss were denied since Mr. Hill's death was not the result of criminally injurious conduct.

{¶3} On September 9, 2014, applicant submitted a request for reconsideration. On October 10, 2014, the Attorney General rendered a Final Decision finding no reason to modify his initial decision. On October 27, 2014, applicant filed a notice of appeal from the Attorney General's Final Decision. Hence, a hearing was held before this magistrate on January 15, 2015 at 9:00 a.m.

{¶4} Senior Assistant Attorney General Georgia Verlaney appeared representing the state of Ohio. Applicant did not attend the hearing.

{¶5} The Attorney General made a brief statement for this magistrate's consideration. First, the Attorney General reiterated the fact that Mr. Hill's death had no causal connection to the criminally injurious conduct of January 18, 2008. Accordingly, all costs associated with his death, i.e. funeral expense reimbursement and dependent's economic loss, would not be compensable. All medical expenses incurred related to the criminally injurious conduct were paid by Medicaid, a readily available collateral source. Pursuant to statute, no award can be granted for pain and suffering or "restitution." Finally, applicant has failed to prove she qualified as an indirect victim pursuant to the holdings in *In re Clapacs*, 58 Ohio Misc. 2d 1, 567 N.E.2d 1351 (Ct. of Cl. 1989) and *In re Fife*, 59 Ohio Misc. 2d 1, 569 N.E.2d 1078 (Ct. of Cl. 1989), since she did not have a sensory and contemporaneous observation of the incident nor did she suffer debilitating psychological injury. Accordingly, the Attorney General's Final Decision should be affirmed. Whereupon, the hearing was concluded.

{¶6} The applicant has the burden of proof to provide reliable and authoritative evidence which establishes it is more likely than not that the decedent's death was caused by criminally injurious conduct. *In re Kinamon*, V2008-30464tc, 2008-Ohio-6092. There is no evidence which causally connects Mr. Hill's death with the criminally injurious conduct. Therefore, applicant is precluded from receiving an award for reimbursement of funeral expenses or dependent's economic loss.

{¶7} R.C. 2743.51(B)(3) states:

{¶1} "(B) 'Collateral source' means a source of benefits or advantages for economic loss otherwise reparable that the victim or claimant has received, or that is readily available to the victim or claimant, from any of the following sources:

{¶2} "(3) Social security, medicare, and medicaid."

{¶8} All medical expenses incurred as the result of the criminally injurious conduct were reimbursed by Medicaid. Applicant suffered no out-of-pocket medical expenses.

{¶9} The Attorney General argued that applicant has failed to establish she was an indirect victim within the parameters of *Clapacs* and *Fife* since she had no sensory and contemporaneous observation of the incident nor did she suffer debilitating psychological injury. However, this court believes the holding in *In re Kaman*, 62 Ohio Misc. 2d 288, 598 N.E.2d 236 (Ct. of Cl. 1991), must be taken into consideration. In *Kaman*, a judge of the Court of Claims determined in sexual assault situations the criminal acts are not committed in the open and by their very nature are secretive. Accordingly, the sensory and contemporaneous requirement can be waived.

{¶10} In the case at bar, applicant was instrumental in discovering that Mr. Hill was a victim of sexual assault. Accordingly, the sensory and contemporaneous requirement should not be the determining factor in deciding applicant's eligibility for an award. However, *Fife* at paragraph two of the syllabus states:

- a) "2. The term 'personal injury,' as used in R.C. 2743.51(L)(1) in reference to a psychological injury, requires a showing of more than mere sorrow, concern or mental distress. That is, the psychological injury must be of such a debilitating nature as to impede or prohibit the resumption or enjoyment of day-to-day activities."

{¶11} In the present case, applicant has presented no medical or psychological evidence which establishes by a reasonable degree of medical certainty that she suffered psychological injury that was so debilitating in nature "as to impede or prohibit the resumption or enjoyment of day-to-day activities." *Fife*

{¶12} As the Attorney General referenced applicant had not sought counseling after she discovered the sexual abuse to Mr. Hill nor has she offered any evidence that the psychological injury she suffered was debilitating. The Attorney General noted that applicant actively sought to obtain guardianship over Mr. Hill, during this period, which would evidence that applicant felt capable of handling Mr. Hill's affairs.

{¶13} Upon review of the case file and with full and careful consideration given to the statement of the Attorney General, I cannot find, by a preponderance of the evidence, that applicant should receive an award of reparations. Evidence clearly

reveals that Mr. Hill's death was not the result of the criminally injurious conduct, which precludes the applicant of receiving an award for funeral expense or dependent's economic loss. All medical expenses incurred as the result of the criminally injurious conduct were reimbursed by Medicaid, a readily available collateral source.

{¶14} R.C. 2743.51(K) states: "Noneconomic detriment' means pain, suffering, inconvenience, physical impairment, or other non-pecuniary damage." Accordingly, applicant's claims for "restitution" and pain and suffering are denied.

{¶15} Finally, applicant has failed to provide any evidence that she suffered debilitating psychological injury as the result of the sexual assault of Mr. Hill. Accordingly, applicant does not qualify as a victim in her own right in accordance with the holdings in *Clapacs* and *Fife*.

{¶16} Based upon the evidence, it is the magistrate's judgment that applicant's claim for an award of reparations should be denied. Therefore, it is recommended the Attorney General's October 10, 2014 decision be affirmed.

{¶17} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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DANIEL R. BORCHERT  
Magistrate

A copy of the foregoing was personally served upon the Attorney General and

Case No. V2012-70319

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DECISION

sent by regular mail to Erie County Prosecuting Attorney and to:

Filed 1/29/15  
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