

[Cite as *In re Moon*, 2016-Ohio-1414.]

IN RE: REBECCA MOON

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Applicant

Case No. 2015-00559-VI

Judge Patrick M. McGrath

DECISION

{¶1} On September 3, 2015, a hearing was held in this matter before a magistrate of this court. On October 29, 2015, the magistrate issued a decision and recommended that the costs incurred by applicant for her treating physician to complete a Family Medical Leave Act (FMLA) form is an allowable expense as defined by R.C. 2743.51(F)(1). However, pursuant to 2743.191(B)(1), the magistrate recommended that applicant's \$20.00 claim for the FMLA expense be denied because the expense was less than \$50.00.

{¶2} Civ.R. 53(D)(3)(b)(i) states, in part, that: "[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision * * *. If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed." The Attorney General timely filed its objection on November 12, 2015. Applicant timely filed her objection on November 16, 2015.

{¶3} On December 16, 2014, applicant filed a crime victim compensation application seeking compensation for medical expenses, work loss, and mileage expenses incurred after an assault against her on November 22, 2014. On April 1, 2015, the Attorney General issued a finding of fact and determination awarding applicant \$3,128.82 for work loss, mileage, and medical expenses, however, applicant's \$20.00 expense to have her physician complete FMLA forms was denied.

{¶4} Applicant accepted the \$3,128.82 award and filed a request for reconsideration for the \$20.00 FMLA expense and for additional work loss.¹ On

¹Applicant's additional work loss was settled and was not an issue before the magistrate.

May 27, 2015, the Attorney General issued a final decision declining to modify its original decision. Applicant appealed to this court on June 8, 2015, and the magistrate issued his decision on October 29, 2015.

{¶5} The Attorney General and applicant raise the same objection, namely that the magistrate erred in determining that applicant's \$20.00 incurred expense for her physician to complete FMLA forms cannot be awarded pursuant to R.C. 2742.191(B)(1).

{¶6} The Attorney General argues that “[t]he fee can be awarded (paid) to the Applicant, because it was included with her claimed expenses pursuant to her initial Crime Victim Compensation Application (Compensation Application) for which the Attorney General’s Office issued a Finding of Fact and Decision awarding \$3,128.82 for her various expenses, although denying the \$20.00 fee in that decision and the ensuing Final Decision, which was the subject of the Applicant’s appeal.” In support of its argument, the Attorney General distinguishes a number of cases where the applicants’ total awards never met or exceeded \$50.00, and thus the claims were denied and the court affirmed the denials. See *In re La Trice McBeth*, V2006-21131tc, 2007-Ohio-2948 (4-16-07) (denial of total award of \$25.00 for evidence replacement expenses); *In re A.R.P.*, V2009-40510tc (11-12-09) (denial of applicant’s claim because the total economic loss was less than \$50.00); *In re Darnell A. Simpson*, V2010-50825tc, 2011-Ohio-4355 (3-9-11) (denial of applicant’s claim because the entire amount of the economic loss totaled \$49.97).

{¶7} The Attorney General contends that this case is different from the cited cases because “[i]n none of those preceding cases did economic loss calculated for an award in a claim meet or exceed \$50.00.” As applicant was already paid \$3,128.82, “the \$20.00 forms’ fee can be paid to Applicant, because it should be added to the total economic loss earlier reviewed, calculated, and awarded * * *.” Similarly, applicant argues that “since Applicant already accepted and collected \$3,128.82 on this claim, her total award does exceed the \$50 minimum and thus the \$20 is payable.”

{¶8} R.C. 2743.191(B)(1) states as follows: “In making an award of reparations, the attorney general shall render the award against the state. The award shall be accomplished only through the following procedure, and the following procedure may be enforced by writ of mandamus directed to the appropriate official: (1) The attorney general shall provide for payment of the claimant or providers in the amount of the award only if the amount of the award is fifty dollars or more.”

{¶9} Upon review of the claim file, the magistrate’s recommendation, and the parties’ objections, the court finds that applicant should be awarded the \$20.00 expense for her FMLA forms because she was entitled to recovery of that expense as part of the \$3,128.82 total award that she previously accepted. The court agrees with the Attorney General that this case is different from prior cases where the applicants’ total awards did not exceed \$50.00, as here applicant’s award for economic loss totaled over \$3,000.00. Accordingly, both the Attorney General and applicant’s objections are SUSTAINED.

PATRICK M. MCGRATH
Judge

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Applicant

Case No. 2015-00559-VI

Judge Patrick M. McGrath

ORDER

{¶10} Upon review, it is the court’s finding that the magistrate’s decision and recommendation with regard to denying applicant the \$20.00 FMLA form expense is

unreasonable and unlawful and both the Attorney General and applicant's objections are SUSTAINED.

{¶11} IT IS HEREBY ORDERED THAT:

{¶12} Applicant Rebecca Moon's objection is SUSTAINED;

{¶13} The Attorney General's objection is SUSTAINED;

{¶14} The October 29, 2015 decision of the magistrate is REVERSED and VACATED, in part;

{¶15} This claim is GRANTED such that an award of reparations is GRANTED in the amount of \$20.00;

{¶16} The case is remanded to the Attorney General for payment in accordance with this order;

{¶17} Costs assumed by the reparations fund.

PATRICK M. MCGRATH
Judge

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