[Cite as *In re Whitman*, 2006-Ohio-1369.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION
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IN RE: JULIA A. WITTMAN	:	Case No. V2004-60121
CAROL C. WITTMAN	:	OPINION OF A THREE-COMMISSIONER PANEL
JULIA A. WITTMAN	:	
Applicants	:	

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{¶ 1} On July 15, 2004, Carol Wittman ("Mrs. Wittman") filed a supplemental compensation application seeking additional reimbursement of expenses incurred with respect to a November 6, 2002 sexual assault incident involving her daughter, Julia Wittman ("Ms. Wittman" or "victim"). On February 10, 2005, the Attorney General granted Mrs. Wittman an additional award in the amount of $15,492.77 in unreimbursed counseling expenses. On March 11, 2005, Mrs. Wittman filed a request for reconsideration contending that she incurred unreimbursed allowable tuition expense for the 2004-2005 school year. On May 10, 2005, the Attorney General denied the claim pursuant to the doctrine of *res judicata* contending that the issue of tuition reimbursement had already been adjudicated.[1] On June 9, 2005, a notice of

[1]On June 16, 2004, a panel of commissioners reversed the Attorney General's denial of tuition expense reimbursement. The panel held that the "separation process was rehabilitative for the victim and was necessary for her recovery, which was supported by ample documentation provided by Dr. Perisol . . . Therefore, we find that the applicant should only be reimbursed all allowable (tuition) expense incurred from February 2003 through June 2004, which covers the

appeal to the Attorney General's May 10, 2005 Final Decision was filed. Mrs. Wittman contends that tuition expenses for the 2004-2005 school year were never considered by the previous panel of commissioners. Hence, this matter came to be heard before this panel of three commissioners on November 16, 2005 at 11:20 A.M.

{¶ 2} Mrs. Wittman, Ms. Wittman, counsel, and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral argument for the panel's consideration. Mrs. Wittman acknowledged that she never discussed withdrawing her daughter from Beaumont High School, a private all girls school, with Jennifer Jeffers[2] ("Ms. Jeffers"), the victim's counselor, mainly because she never considered returning her daughter to Cleveland Heights High School for the 2004-2005 school year. Mrs. Wittman noted that her daughter suffers from Post Traumatic Stress Disorder, anxiety, panic attacks, and headaches as a result of the incident. Mrs. Wittman stated that Cleveland Heights High School's administrators and students regarded her daughter in a very negative manner after the incident and therefore she did not want her daughter to return to such a hostile environment. Moreover, Mrs. Wittman noted that students at Cleveland Heights High School have become increasingly more violent since her daughter's departure. Mrs. Wittman testified that her daughter, through counseling, has made great strides in recovering from the incident and hence she did not want to impede her daughter's recovery efforts by returning her to Cleveland Heights High School. Mrs. Wittman testified that she

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period of time from Julia's enrollment into Beaumont High School until the offender's graduation from Cleveland Heights High School." *Id. at 6.*

[2]Mrs. Wittman testified that she was referred to Ms. Jeffers by the staff at Laurel Wood Hospital. Ms. Jeffers specializes in working with teenagers.

believed Beaumont High School provided a therapeutic environment for her daughter's rehabilitation and treatment from the incident. Mrs. Wittman testified that she did not seek recovery of 2004-2005 school year tuition at the last panel hearing.

{¶ 3} Ms. Wittman testified that she graduated from Beaumont High School and now attends Cleveland State University. Ms. Wittman stated that Beaumont High School provided her a safe environment in which to escape the constant harassment she endured after the incident at Cleveland Heights High School. Ms. Wittman explained that at Beaumont High School she was eventually able to participate in various school activities and to foster new friendships. Ms. Wittman also noted that her grades significantly improved while attending Beaumont High School. Ms. Wittman stated that she still suffers from the effects of the incident, but believes she is steadily improving and hence she concluded her counseling sessions last spring. Ms. Wittman indicated that she believes it was psychologically important for her to attend Beaumont High School her senior year of high school.

{¶ 4} Counsel stated that the claim for reimbursement of the victim's 2004-2005 school year tuition at Beaumont High School should be granted based upon the testimony and evidence proffered. Counsel argued that it was reasonable and necessary for the victim to have completed her senior year at Beaumont High School. Counsel stated that the victim received therapeutic value by attending Beaumont High School during the 2004-2005 school year. Counsel argued that returning the victim to a hostile environment, such as Cleveland Heights High School, would have been unreasonable and detrimental to the victim's overall well-being. Counsel urged the panel to consider the February 17, 2004 letter from Ms. Jeffers indicating that it was in Ms. Wittman's best interest to complete her senior year at Beaumont High School.

Lastly, counsel argued that the doctrine of *res judicata* fails to apply in this case, since Mrs. Wittman did not seek recovery of the 2004-2005 school year tuition during her prior appeal before the panel of commissioners.

{¶ 5} The Assistant Attorney General maintained that the claim for reimbursement of the victim's 2004-2005 school year tuition at Beaumont High School should be denied. The Assistant Attorney General argued that the doctrine of *res judicata* applies in this case, since a previous panel of commissioners considered all tuition costs in their June 16, 2004 decision. The Assistant Attorney General further stated that the February 17, 2004 letter from Ms. Jeffers had been submitted to the court prior to the panel's June 16, 2004 decision being rendered and hence the prior panel considered Ms. Jeffers' letter in their decision. The Assistant Attorney General also argued that Mrs. Wittman never intended to return the victim to Cleveland Heights High School, since she prepaid the victim's 2004-2005 school year tuition for Beaumont High School. Lastly, the Assistant Attorney General noted that Mrs. Wittman failed to submit additional medical information concerning the victim's psychological state from June 2004 through June 2005 as ordered by the panel on September 1, 2005.

{¶ 6} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. First Issue: Whether further consideration of the tuition matter is prohibited based upon the doctrine of *res judicata?*

{¶ 7} We believe that the June 16, 2004 panel decision only concerned tuition expenses ranging from February 2003 through June 2004. After review of the June 16, 2004 decision and hearing transcript, we find the previous panel primarily concentrated on whether the victim's

separation from the offender (specifically the transfer from Cleveland Heights High School to Beaumont High School) was necessary for the victim's rehabilitative treatment and care. We find the June 16, 2004 decision only pertained to the issue of separating the offender from the victim. The residual effects of the criminally injurious conduct upon the victim were not considered by the previous panel.[3] Second Issue: Whether the victim's placement at Beaumont High School for the 2004-2005 school year was necessary for her continued rehabilitation, treatment, and care?

{¶ 8} Revised Code 2743.51(F) states:

> (F) "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 eyeglasses and other corrective lenses. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semi-private accommodations, unless accommodations other than semi-private accommodations are medically required.

{¶ 9} Pursuant to R.C. 2743.51(F), tuition expenses generally do not qualify as allowable expense. However, over the years there have been exceptions to that rule. This panel adopts the holding espoused in *In re Weber* (1989), 61 Ohio Misc. 2d 357, where the single commissioner held that tuition expenses may be reimbursed when such an expense is *reasonably incurred* and *medically necessary* for the victim's rehabilitation, treatment, and care. The single commissioner also held that *future claims for additional tuition reimbursement* may be considered and granted upon "the precise showing of the

[3]Moreover we have failed to locate a copy of Ms. Jeffers' February 17, 2004 letter within the claim file (Exhibit 2).

relationship between residual effects of the victimization and the asserted private schooling." *Id. at 360*. We also refer to *In re Masetta*, V04-60431tc (12-1-04), 2004-Ohio-7336, where the panel denied an applicant's claim for tuition reimbursement, despite the psychologist's letter certifying the victim's emotional distress. The panel held that the applicant failed to submit sufficient medical documentation probative of the necessity to have enrolled the victim into a private school for rehabilitative, treatment, and care purposes.

{¶ 10} Testimony concerning the residual effects of Ms. Wittman's victimization as well as the claimants' perceived need for continued schooling at Beaumont High School was presented at the hearing. A letter from Ms. Jeffers, (Exhibit 2) was introduced as proof of the victim's need to have completed her senior year at Beaumont High School. Even though, we find Mrs. Wittman's decision not to return the victim to Cleveland Heights High School was reasonable in light of the hostile environment at Cleveland Heights High School, we do not find at this time that sufficient proof has been submitted to show a continued medical need for the victim to have remained at Beaumont High School.

{¶ 11} Contrary to the sentiments detailed by our colleague in dissent, a majority of this Panel believes that the applicant is required to submit additional medical information regarding the victim's psychological state from June, 2004 through June, 2005.

{¶ 12} On September 1, 2005, the panel ordered the parties to submit additional medical information as potential proof of the victim's psychological need to complete her senior year at

{¶ 13} Beaumont High School. Unfortunately, such requisite proof in our opinion was not forthcoming. It is important to observe that a prior Panel set specific limits in granting an

award for tuition for the time frame of February, 2003 through June, 2004. The applicant's mother testified that she did not seek recovery of 2004-2005 school year tuition at the last panel hearing. A reiteration and review of the materials already within the claim file (as described by the dissent) is not sufficient to disturb the earlier findings issued by this panel. Therefore, based upon the above facts and analysis, we find the May 10, 2005 decision of the Attorney General shall be affirmed.

JAMES H. HEWITT III
Commissioner

GREGORY P. BARWELL
Commissioner

Timothy McCormack, Commissioner, Dissenting Opinion: I respectfully reach a different conclusion than my two distinguished colleagues.

{¶ 14} The applicant's appeal for a supplemental claim should be granted. The claim arises out of criminally injurious conduct suffered by her then 16 year old daughter, Julia Wittman. The criminally injurious conduct was recognized by the June 2004 decision of an Ohio Court of Claims Panel of Commissioners (*In re Wittman*, V2004-60121tc, 2004-Ohio-4183).

{¶ 15} This supplemental claim was filed on behalf of the victimized minor by her mother. The applicant's daughter was 16 years old at the time that she was the victim of a

violent "sexual assault incident" (In re Wittman). In its June 2004 ruling, an Ohio Court of Claims Victims of Crime Division Panel of Commissioners found that the applicant qualified as a victim of crime and was eligible for compensation from the Victims of Crime Fund. The 2004 Wittman decision in part provided school tuition payments at a neighboring high school in order to remove the child from the school system that was directly associated with the sexual assault.

{¶ 16} The supplemental claim before us now clearly qualifies for reimbursement from the victims' fund based on the evidence and Court of Claims precedent. The applicant has more than met the statutory burden of proof. Clearly, the supplemental claim is supported by the preponderance of the evidence. The Wittman supplemental claim qualifies on the basis of precedent as a result of the Court of Claims reasoning contained in *In re Weber* (1989), 61 Ohio Misc. 2d 357.

{¶ 17} The victim's mother, Carol Wittman, the applicant, has proven, by a preponderance of the evidence, that: 1) her daughter was a victim of a criminally injurious sexual assault on November 6, 2002, and 2) that the applicant made multiple good faith attempts to shield her daughter from the trauma of the immediate connection of the Cleveland Heights school property, the sexual assault, and the refusal of two public school systems to make the change of school systems necessary to assist Carol Wittman to therapeutically relocate her daughter. The clean and complete removal of Julia from Cleveland Heights High School was essential to her recovery from the sexual assault. The applicant has proven that it was necessary for her 16 year old daughter's recovery, rehabilitation, and psychological treatment that she be moved to the alternate high school as an integral response to the psychological trauma that

followed the twofold victimization; that of the assault and its consequences being ignored by Cleveland Heights school officials.

{¶ 18} The Attorney General argued that the 2004 Wittman decision would preclude an additional supplemental claim for Julia Wittman's senior year tuition payments because the 2004 decision only referenced the prior school year for allowance. The Attorney General would, if upheld in this reasoning, shut down the legally mandated discretion of the 2005 panel by arguing that *res judicata* would preclude this panel from making a determination in this matter. Neither this current panel of commissioners, the 2004 panel, nor the Attorney General has any such authority to preclude the filing and consideration of subsequent supplemental claims. The Ohio General Assembly wisely provided for just this type of filing with the adoption of the statute, R.C. 2743.68; recognizing the need to consider ongoing therapy in response to victimization. No language in a party's brief or dicta in a prior finding could erase utilization of that legal remedy by a qualified applicant. Such a ruling would be contrary to our legal mandate.

{¶ 19} The core issue then before this panel is whether the applicant, Carol Wittman, by a preponderance of the evidence, has met the prudent standard this court established in *In re Weber, supra,* relative to tuition reimbursement. She clearly has met that standard. Multiple forms of conclusive evidence support the claim through the filing of written expert opinion letters from professionals who were still treating the victim in 2005, and the filing of medical records which individually covered calendar years 2003, 2004, and 2005. The written filings as provided by applicant's counsel, in support of the supplemental claim were thorough and responsive to the issue. Extensive insight into the therapeutic treatment of the victim and the good faith effort of her parents to protect her throughout the last two years of her high school

experience were included. Applicant's counsel filed an extensive responsive brief on August 24, 2005. On August 1, 2005 counsel filed the requested medical and psychological expert opinion records covering the 2004-2005 period. The testimony at the hearing relative to the victim's state of well being was complete to the point of discomfort in that the victim testified fully to the sexual assault and her recovery plan. Applicant's counsel filed additional up-to-date police reports revealing the repeated breakdown in public safety at the Cleveland Heights High School during what would have been the victim's senior year there.

{¶ 20} The applicant and the victim testified extensively and candidly under oath to the relevant issues which are pending before this panel. Their testimony as to the necessity of the alternative high school as central to the well being of the student-victim, for her rehabilitation and treatment of the underlying trauma, was most compelling. The applicant was fully and effectively cross examined. There was nothing unearthed during the proceedings that changed the original compelling reasons for the 2004 Wittman decision approving these tuition payments. The change of schools was as needed in 2005 as in 2004 for healing of the trauma. The evidence supported the supplemental claim.

{¶ 21} The current panel would rule contrary to law and jeopardize the best interests of the victim should it overlook the prudent insight of the 2004 Wittman panel ruling. That 2004 panel has provided us with valued precedent. The 2004 Wittman decision was unanimous in holding:

> "We find that the applicant has proven, by a preponderance of the evidence, that she incurred allowable (tuition) expense as a result of the criminally injurious conduct. BASED UPON THE WEIGHT OF THE APPLICANT'S TESTIMONY AND THE TOTALITY OF THE CIRCUMSTANCES, we believe that it was reasonable for this applicant to have sought a new school for the victim, which was away from the offender.

> We believe the separation process was rehabilitative for the victim and was necessary for her recovery , which was supported by ample documentation provided by Dr. Peirsol. Moreover, we believe that the applicant, after repeatedly being ignored by school administrators, undertook reasonable steps to provide a safe school environment for Julia. When all else failed, the applicant was only left with the option of transferring the victim to Beaumont High School." (Emphasis added).

Certainly some circumstances had changed from the end of the 2004 school year to the 2004-2005 school year. The accused perpetrator had left the high school that the victim had attended. However, the 2004 decision, as did *In re Weber*, went well beyond the whereabouts of a perpetrator. There was not a scintilla of evidence offered to controvert the 2004 Wittman holding that the underlying necessity for the Beaumont enrollment, for purposes of rehabilitation and treatment of the victim, was any less for her senior year than for the prior year. The medical-psychological evidence filed on August 8, 2005, by Julia's treating family counseling expert, Roberta Tonti LISW, IMFT restated the need: "Julia, with the support of her family, her therapist was able to return to a NEW SCHOOL ENVIRONMENT and make the adjustment." (Emphasis added).

{¶ 22} The testimony of the applicant and the teenage victim was compelling on this point. There was no evidence that it would be in the best interests of the victim to be returned to Cleveland Heights School system for her senior year. The evidence was that the high school found for the junior and senior years was essential for this young girl's well being in both years. It is now thoroughly understood and supported by evidence here that even the most well grounded children do best when they are not routinely uprooted from their school systems. The evidence is that Julia had just moved from Florida to this new school weeks before the sexual assault. The sexual assault led to Julia having to be removed from this school of her choice. The

evidence was that the predictable consequence of withdrawing her from yet another school system, her third in a matter of months, withdrawing her from this new found safe space, where she had regained her balance and sense of security, would negate much of her therapeutic progress. There was no evidence that this girl who had suffered a sexual assault by a Cleveland Heights classmate, on Cleveland Heights school grounds, and whose every effort at Cleveland Heights based remedies had been rebuffed should be denied access to the very Victim of Crime Fund that was established to solve such a problem for just such a victim. The 2005 evidence clearly showed that the fact that the perpetrator of the sexual assault did not attend her new school did not make this girl whole. Expert opinion evidence asserted that her best chance to heal was to continue to follow a course of rehabilitation and treatment at Beaumont School.

{¶ 23} The 2004 panel, in its wisdom in *Wittman*, *supra*, spoke to the need for "the separation" and the importance of "to have sought a new school." These realities, this trauma, this damage to a 16 year old were not erased in 12 months from the 2004 decision to now. The findings contained in the July 26, 2005 Tonti report clearly show a young woman still being treated for deep psychological trauma into the second half of her senior year. The Attorney General's office approved $15,492.77 in counseling fees, in February 2005, for Julia's recovery from the criminally injurious conduct and yet at the same time argued that the child did not require a safe and rehabilitative school setting, away from the situs of her trauma. During that very same period, her senior year at Beaumont, she was being treated by family psychotherapeutic counselors. The argument contradicts the reality.

{¶ 24} Three medical-psychological experts attested to deep underlying trauma: Dr. Peirsol in early 2003, counselor Jennifer Jeffers in 2004-2005, and Roberta Tonti in her July 26,

2005 reporting which included winter 2005 sessions for Julia. Their findings are consistent with one another; reaching the same conclusions that the Ohio Court of Claims Panel of Commissioners did in 2004.

> "It is my professional opinion that Julia is best served by continuing her senior year at her current school. She has worked very diligently to develop peer relationships and regain comfort in an academic setting over the last two years at Beaumont School. Removing her for her senior year would be very detrimental to her psychological well being." Jennifer Jeffers, LISW. (Emphasis added).

{¶ 25} The July 26, 2005 analysis prepared and authored by Roberta Tonti, LISW, IMFT makes clear the necessity of a "new school environment" as an essential foundation block for Julia's recovery, rehabilitation, and treatment.

{¶ 26} By law the applicant has the burden to prove "by the preponderance of the evidence" that the claim meets the statutory requirement. In this matter, both mother and daughter have shown beyond a reasonable doubt that: "the separation process was rehabilitative for the victim and was necessary for her recovery, which was supported by ample documentation provided by Dr. Peirsol."(*Wittman* 2004, *supra*).

{¶ 27} The evidence is that the applicant took the right course of action regarding her teenaged, sexually victimized daughter by moving her to a therapeutic school setting. The evidence is that this move was necessary to safeguard and heal this victimized girl. The evidence through the 2005 hearing upholds the basis of the Wittman 2004 decision. This supplemental claim, consistent with the evidence of the full history of Julia Wittman's case, should be approved forthwith.

TIM MC CORMACK
Commissioner

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: JULIA A. WITTMAN	:	Case No. V2004-60121
CAROL C. WITTMAN	:	ORDER OF A THREE-COMMISSIONER PANEL
Applicant	:	

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IT IS THEREFORE ORDERED THAT

1) The May 10, 2005 decision of the Attorney General is AFFIRMED;

2) This claim is DENIED and judgment is rendered for the state of Ohio;

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;

4) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

GREGORY P. BARWELL
Commissioner

ID #\13-dld-tad-120605

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

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