

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

65 South Front Street, Fourth Floor
Columbus, OH 43215

614.387.9800 or 1.800.624.6263
www.cco.state.oh.us

IN RE: ALEXANDER O. ZICARI

Case No. V2008-30081

ALEXANDER O. ZICARI

Commissioners:

TARA L. ZICARI

Lloyd Pierre-Louis, Presiding

Clarence E. Mingo II

Randi Ostry LeHoty

Applicants

ORDER OF A THREE-
COMMISSIONER PANEL

{¶ 1} On March 15, 1999, the applicant, Alexander Zicari, filed a reparations application as the result of an assault that occurred on June 6, 1998. On November 30, 1999, a single commissioner of the Court of Claims rendered a decision finding that the applicant qualified as a victim of criminally injurious conduct. However, an award of reparations was denied since all economic loss incurred had been reimbursed by readily available collateral sources and the applicant had been unable to prove, by a preponderance of the evidence, that he sustained work loss. On April 20, 2000, the applicant submitted a supplemental compensation application seeking reimbursement for medical expenses incurred and work loss sustained. On October 27, 2000, the Attorney General issued a Finding of Fact and Decision granting the applicant an award of reparations in the amount of \$7,611.08, of which \$903.56 represented reimbursement of medical expenses and \$6,707.52 represented work loss incurred for the period March 14, 2000 to August 12, 2000. On June 21, 2002, the applicant filed a second supplemental compensation application. On October 22, 2002, the Attorney General produced a Finding of Fact and Decision awarding the applicant \$2,304.65, which represented reimbursement of medical expenses incurred. On December 12, 2005, the applicant, Tara Zicari filed a supplemental compensation application on behalf of her

husband, Alexander Zicari. On April 11, 2006, the Attorney General issued a Finding of Fact and Decision granting the applicant an additional award in the amount of \$3,730.00, which represented \$1,385.65 in unreimbursed medical expenses and \$2,344.35 in unemployment benefits loss for the period December 1, 2005 to January 15, 2006. On May 2, 2007, the applicant, Alexander Zicari, again filed a supplemental compensation application. The Attorney General issued a Finding of Fact and Decision on August 30, 2007, denying an award of reparations. The Attorney General stated that expenses incurred at the Cleveland Clinic may be subject to coverage under the Ohio Hospital Care Assurance Program (HCAP) while other medical expenses were covered by Medical Mutual and Carpenter's Health, readily available collateral sources. On October 5, 2007, the applicant submitted a request for reconsideration. The applicant asserted that he was not HCAP eligible at the time he received treatment from the Cleveland Clinic and that he is responsible for the outstanding balances and deductibles after the payments from Medical Mutual and Carpenter's Health are considered. On January 2, 2008, the Attorney General rendered a Final Decision. The Attorney General determined that the applicant incurred additional unreimbursed economic loss in the amount of \$49.75, however pursuant to R.C. 2743.191(B) payment can only be issued when the award exceeds \$50.00. Accordingly, the Attorney General asserted that if the applicant incurs additional unreimbursed expenses a supplemental compensation application should be filed. With respect to two checks submitted by the applicant to the Cleveland Clinic in the amounts of \$986.27 and \$179.34, the Cleveland Clinic could not verify these check payments and they could not be linked with any date of service, accordingly they were denied reimbursement. On January 22, 2008, the applicant filed a notice of appeal from the Attorney General's Final Decision of January

2, 2008. Hence a hearing was held before this panel of three commissioners on April 16, 2008 at 11:10 A.M.

{¶ 2} The day prior to the hearing the applicant filed a motion to be allowed to testify via telephone. The motion is granted.

{¶ 3} The applicant's attorney, Karen Ireland-Phillips and the applicant, Tara Zicari appeared via telephone while Assistant Attorney General Amy O'Grady appeared in person. Assistant Attorney General O'Grady stated that after recalculating all expenses that the Attorney General recommends that the applicant be granted an additional award of reparations in the amount of \$128.77. However, the applicant's attorney was not in agreement with that figure. Ms. Ireland-Phillips believes that the total amount the applicant paid to the Cleveland Clinic should be reimbursed by the Victims' Fund. In the alternative, applicant's counsel suggests that the court award the amount recommended by the Attorney General and issue an order directing the Cleveland Clinic to pay the remainder to the applicant.

{¶ 4} The applicant, Tara Zicari, testified that on or about September 1, 2006 the applicant wrote a check to the Cleveland Clinic in the amount of \$179.34, for a prior surgery bill incurred by the victim. On or about June 2, 2006, she wrote a second check to the Cleveland Clinic in the amount of \$986.20. The checks were written for previous surgeries and the checks were negotiated. The applicant related that in discussions with the Cleveland Clinic, the Cleveland Clinic acknowledged that they had been double paid for the amounts received from the applicant. Payment had been received from the applicant's insurance carrier and the applicant, and the applicant was told the double payment amount had not been reimbursed to the insurance carriers or the applicant. The applicants' attorney submitted the two cancelled checks mentioned in the applicant's testimony into evidence.

{¶ 5} Assistant Attorney General Amy O'Grady called William Fulcher, current Assistant Section Chief and Manager of the investigative staff for the Crime Victims Compensation section of the Attorney General's office. Mr. Fulcher testified concerning the process used to verify medical expenses. With respect to the specific cost at bar, he stated after extensive review an additional award of \$128.77 should be paid to the applicant. He related he could not find specific bills which related to the amounts applicant paid to the Cleveland Clinic. Assistant Attorney General O'Grady then questioned Mr. Fulcher regarding how the amount paid in the two checks by the applicant was determined. Mr. Fulcher related the detailed steps his office took to determine those amounts and indicated with the exception of \$34.79 - an award included in the \$128.77 - these amounts were paid in prior supplemental awards to the Cleveland Clinic.

{¶ 6} Upon cross examination Mr. Fulcher conceded that no documentation supports the allegation that the applicant or anyone else has received a refund from the Cleveland Clinic for the admitted overpayment that they received.

{¶ 7} Commissioner LeHoty then questioned Mr. Fulcher. Mr. Fulcher stated that both the Attorney General's office and the applicant paid the bills in question, with the exception of \$34.79. He asserted that the Cleveland Clinic had been overpaid and any refund due to the applicant was a matter between the applicant and the Cleveland Clinic.

{¶ 8} The applicants' counsel, Ms. Ireland-Phillips made a brief closing statement pointing out that the applicant paid the Cleveland Clinic and never received a refund for the overpayment. Applicant's counsel requests that this panel order the Attorney General to pay the amounts contained in the canceled checks submitted by the applicant, or order the Cleveland Clinic to reimburse the amount to the applicant or in

the alternative pay the \$128.77 recommended by the Attorney General. Assistant Attorney General O'Grady asserted that the Attorney General has paid all it is statutorily obligated to pay with the exception of the \$128.77. Upon closing remarks by the applicants' attorney the hearing was ended.

{¶ 9} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, we find the applicant incurred additional allowable expense, in the amount of \$128.77. This panel has no statutory authority to order the Cleveland Clinic to address the issue of a refund due to the applicant for overpayment received by the Cleveland Clinic. The Attorney General has fulfilled its statutory obligation by paying the unreimbursed portions of the bills incurred by the applicant. Therefore, the January 2, 2008 decision of the Attorney General is modified and the applicant shall be awarded an additional \$128.77.

{¶ 10} IT IS THEREFORE ORDERED THAT

{¶ 11} "1) The cancelled checks submitted by the applicant shall be admitted into evidence;

{¶ 12} "2) The January 2, 2008 decision of the Attorney General is MODIFIED to render judgment in favor of the applicant in the amount of \$128.77;

{¶ 13} "3) This claim is remanded to the Attorney General for payment of the award;

{¶ 14} "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;

{¶ 15} "5) Costs are assumed by the court of claims victims of crime fund.

[Cite as *In re Zicari*, 2008-Ohio-4262.]

LLOYD PIERRE-LOUIS
Presiding Commissioner

CLARENCE E. MINGO II
Commissioner

RANDI OSTRY LE HOTY
Commissioner

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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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To S.C. Reporter 8-20-2008