

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center
65 South Front Street, Fourth Floor
Columbus, OH 43215
614.387.9860 or 1.800.824.8263
www.cco.state.oh.us

IN RE: TITUS J. ARNOLD,

VICTORIA L. ARNOLD,

and

EBONY L. CARTER,

Applicants.

Case No. V2005-80860

Commissioners:
Lloyd Pierre-Louis, Presiding
Gregory P. Barwell
Karl C. Kerschner

ORDER

{¶1} On September 7, 2006, a panel of commissioners, Randi Ostry LeHoty, Thomas H. Bainbridge and Tim McCormack issued an order reversing the decision of the Attorney General and finding that the decedent at the time of his death was providing financial support to his children and the applicant, Ebony Carter. The case was remanded to the Attorney General for calculation of the economic loss incurred.

{¶2} On April 6, 2007, the Attorney General issued an amended finding of fact and decision. The Attorney General determined that the children were receiving \$154.00 per month per child from the Social Security Administration and, that this amount outweighed any support the decedent was providing to his children prior to his death. Furthermore, the Attorney General was unable to obtain work loss information from the decedent's employer, Visions for Youth, to determine the wages the decedent was earning prior to his death. Finally, since the applicant had not presented any

evidence that she incurred expenses to replace the ordinary and necessary services performed by the decedent for the benefit of his family before his death, the applicant's claim for dependent's replacement services loss was denied.

{¶3} On May 4, 2007, the applicant submitted a request for reconsideration. The applicant asserted the Attorney General should follow the direction of the panel of commissioners in their decision rendered on September 7, 2006. All issues with respect to dependency had been established at that time. On February 1, 2008, the Attorney General rendered a Final Decision finding no reason to modify the initial decision. On February 22, 2008, the applicants filed a notice of appeal from the Final Decision of the Attorney General rendered on February 1, 2008. Hence, this case was heard before this panel of three commissioners on September 25, 2008 at 10:35 A.M.

{¶4} The applicant, Victoria Arnold, the applicant's attorney Mark Poole and Assistant Attorney General Amy O'Grady appeared before the panel of commissioners. The applicant's attorney Mark Poole presented an opening statement reiterating his position that the main issue in this case, dependent's economic loss, had already been established by the decision rendered by a panel of commissioners on September 7, 2006. Attorney Poole asserted the only matter before the court should be to compel this panel to order the Attorney General to grant a monetary award in this case.

{¶5} Assistant Attorney General O'Grady asserted that the panel made three findings in its decision of September 7, 2006; 1) that the decedent was providing financial support to his family; 2) the decedent was the bread winner for the family and; 3) the decedent resided with his family at the time of his death. Accordingly, the panel ordered the Attorney General to calculate economic loss and issue an award to the applicant, Ebony Carter and her children. Ms. O'Grady contends the Attorney General's office followed the panel's direction but a calculation of dependent's economic loss revealed that collateral source benefits received from the Social Security Administration outweighed any loss of support experienced by Ms. Carter and her family.

{¶6} Ms. O'Grady called William Fulcher, Assistant Section Chief of the Attorney General's office. Mr. Fulcher testified that his main responsibility is investigating death claims to determine dependent's economic loss and dependent's replacement services loss. In the case at bar, Mr. Fulcher testified that he followed the directions provided by the panel in its decision of September 7, 2006. However, since

the panel did not provide a specific amount to be paid he attempted to calculate dependent's economic loss. Ms. Fulcher related that there were no tax returns available. Accordingly, the basis for the calculation of dependent's economic loss was the \$50.00 per month in child support he was ordered to pay and the \$90.00 to \$100.00 per month the applicant testified in the prior hearing that Mr. Arnold provided to his family prior to his death. The decedent's employer Visions for Youth did not respond to the Attorney General's inquiries.

{¶7} Mr. Fulcher testified that no award was issued for dependent's economic loss since the Social Security benefits outweighed the \$50.00 or \$90.00 to \$100.00 of support the children had been receiving from their father, the victim prior to his death. Mr. Fulcher revealed that eventually the decedent's employment history was received from his employer, Visions for Youth. The employment information revealed that he had been employed full time 17 months prior to his death. The Attorney General's office then tried to determine what percentage of his income the applicant used to support his family. The only expenses relied on were those provided by the applicant to Job and Family Services concerning monthly rent and the gas utility bill. The applicant was also receiving Aid to Dependent Children ("ADC") in the amount of \$452.00 per month, however, this amount was not used as a collateral source since the applicant was receiving ADC prior to the decedent's death. Finally, applicant, Ebony Carter, did not submit food and clothing expenses. Mr. Fulcher expressed the belief since the applicant was receiving Food Stamps and ADC she had no such expenses. When questioned how the decedent was using the money he earned, Mr. Fulcher referenced a letter from Urbana University that stated the decedent was trying to pay off his school debt as well as support his family.

{¶8} Assistant Attorney General O'Grady presented Mr. Fulcher State Exhibit "A," a printout from Ohio Job and Family Services. Mr. Fulcher stated nothing on the printout would affect the manner in which the applicant's claim for dependent's economic loss would be calculated.

{¶9} Upon cross-examination, Mr. Fulcher stated the Final Decision of the Attorney General did not factor in the income the applicant was earning prior to his death. Mr. Fulcher also related that he did receive a letter from the decedent's employer via the applicant's attorney that Mr. Arnold was employed part-time with Visions for Youth from June 2003 through September 2003 and worked full time starting

December 2003 until his death. The letter from Mr. Arnold's employer also indicated that his year to date income for the first three months of 2005 was \$6,312.00. Finally, Mr. Fulcher conceded that he had received information prior to the hearing that Mr. Arnold's income for some of this income was used when calculating dependent's economic loss.

{¶10 }Attorney Poole then questioned Mr. Fulcher concerning the applicant's Exhibit "1," a July 24, 2006 letter from Urbana University. Mr. Fulcher read a portion of the letter which related he owed money to the University and had an obligation to support his family so he would temporarily discontinue his education to meet those obligations, but had every intention to continue his education at a later date.

{¶11} Commissioner Gregory P. Barwell questioned the witness and discovered the decedent's income for 2004 was \$20,624.00 and his income prior to his death on April 14, 2005 was \$6,312.00.

{¶12} Mr. Poole gave a closing statement but it became clear to this panel that insufficient evidence had been provided to make a firm and defensible calculation for dependent's economic loss. Therefore Presiding Panel Commissioner Pierre-Louis directed that this claim be continued with the assurance from the applicant's attorney that he would provide the Attorney General's office with additional information necessary to calculate dependent's economic loss. Mr. Poole was directed to use his best efforts to obtain a W-2 from the decedent's employer. Whereupon the hearing was concluded.

Continued sua sponte.

IT IS THEREFORE ORDERED THAT

- 1) This claim is hereby continued *sua sponte*;
- 2) A status conference via telephone shall be held on **January 22, 2009 at 1:00 P.M.**;
- 3) Any calculations concerning dependent's economic loss compiled by the Attorney General shall be filed with this Court;
- 4) The oral hearing shall now be heard on **February 18, 2009 at 10:00 A.M.** at the **Court of Claims of Ohio, The Ohio Judicial Center, 65 South Front Street, Fourth Floor, Columbus, Ohio 43215**, by a panel of three commissioners;
- 5) The parties to this action shall be prepared to proceed on the merits of this case on **February 18, 2009**;
- 6) This clerk shall send the applicants a copy of this order and a VC-21 (Confirmation of Attendance) postcard.

LLOYD PIERRE-LOUIS
Presiding Commissioner

GREGORY P. BARWELL
Commissioner

KARL C. KERSCHNER
Commissioner