

[Cite as *In re Rose*, 2003-Ohio-5506.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: NATHAN W. ROSE	:	Case No. V2003-40399
SARAH CLARK-ROSE	:	<u>ORDER OF A THREE-</u>
RICHARD C. ROSE	:	<u>COMMISSIONER PANEL</u>
Applicants	:	
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{¶1} On April 1, 2002, the applicants filed a reparations application seeking reimbursement for expenses incurred in relation to the March 14, 2001 assault of their son, Nathan Rose. On November 21, 2002, the Attorney General issued a Finding of Fact and Decision granting the applicants an award of reparations in the amount of \$4,541.25. However, the Attorney General denied certain expenses pursuant to R.C. 2743.60(D) since the applicants had insurance coverage with Coresource. The Attorney General also denied the claim for family counseling. On December 18, 2002, the applicants filed a request for reconsideration. On April 17, 2003, the Attorney General issued a Final Decision granting the applicants an additional award in the amount of \$3,622.37. On May 6, 2003, the applicants filed a notice of appeal contending that the Moore Chiropractic, Radiology Physicians, Inc. and Miami Valley ER Specialist expenses relate to the criminally injurious conduct, but have not been paid by insurance. On June 6, 2003, the Attorney General filed a Brief recommending that the Final

Decision be affirmed. The Attorney General asserted that the applicants' insurance had covered their expenses and that the Moore Chiropractic bill was not related to the criminally injurious conduct. However, the Attorney General noted that the applicants are owed a balance of \$26.60 with respect to the Miami Valley ER Specialist expense. On June 12, 2003, the panel granted the applicants' motion to pay the undisputed amount of \$3,622.37. This claim came to be heard before this panel of three commissioners on July 24, 2003 at 10:50 A.M.

{¶2} Applicant Sara Clark-Rose, the victim, applicants' counsel and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. Nathan Rose, the victim, testified that in January of 2001 he sought chiropractic treatment from Dr. Allen Moore after sustaining a weightlifting injury shortly after Christmas. The victim stated that he injured his upper left shoulder region. Nathan asserted that when the injury first arose he utilized home remedies before seeking alternative treatment. Nathan contended that his father suggested that he see a chiropractor. Nathan stated that after 3-4 weeks of chiropractic treatment his pain ceased, he terminated his sessions with Dr. Moore, and he returned to his normal routine.

{¶3} Nathan also testified that on March 14, 2001 he was shot in the face with a BB gun. The victim explained that he sought medical assistance at the hospital, where he was administered and prescribed pain medication. However, Nathan stated that the pellet remained embedded in his jaw for five days until surgically removed. Nathan advised the panel that he experienced severe pain as a result of the assault and that no medications seemed to relieve his agony. The victim stated that his emotional state declined as a result of his anguish and hence he was admitted for two weeks to Kettering Youth Center for counseling. Nathan stated that he

received pain medication while at Kettering, but he eventually returned to Dr. Moore for chiropractic treatment. The victim asserted that Dr. Moore was informed that his current pain was caused by the assault and was not an aggravation of his prior weightlifting injury. Nathan indicated that Dr. Moore's treatment was primarily the same even though his pain surrounded his neck region and not his shoulder. Nathan also stated that he did not recall Dr. Moore taking notes about his assault related injury.

{¶4} Applicants' counsel contended that, in light of the testimony presented, the Moore Chiropractic bill should be reimbursed. Counsel asserted that Dr. Moore submitted an incorrect report and suggested that Dr. Moore may not have understood that the BB incident was an actual crime. Counsel urged the panel to rely on medical statements, contained in the file, which indicate that Nathan sustained whiplash.

{¶5} The Assistant Attorney General continued to maintain that the Moore Chiropractic bill must be denied since the applicants failed to sufficiently prove that the expense was related to the criminally injurious conduct. The Assistant Attorney General stated that medical records submitted from Dr. Moore's office indicate that his services were not related to the criminally injurious conduct. Accordingly, the Attorney General requested that reimbursement of Dr. Moore's expense be denied.

{¶6} From review of the file and with full and careful consideration of all the information presented at the hearing, this panel makes the following determination. We find that the applicants failed to prove, by a preponderance of the evidence, that the Moore Chiropractic expense is related to the criminally injurious conduct. We find the following facts to be compelling: (1) the victim's own service provider indicated that his services were not related to

the criminally injurious conduct, (2) the victim testified that he received essentially the same type of treatment for the weightlifting injury as the assault, (3) there was only a 3-4 week break from when Nathan originally ceased treatment with Dr. Moore to when he was assaulted and (4) no documents were located in the file indicating that Nathan was diagnosed with whiplash. Therefore, based upon the greater weight of the evidence, the April 17, 2003 decision of the Attorney General shall be modified to grant the applicants a designated sum in the amount of \$26.60, as noted in the Attorney General's Brief with respect to the Miami Valley ER Specialist expense.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} 1) The April 17, 2003 decision of the Attorney General shall be MODIFIED to grant the applicants an additional award in the amount of \$26.60;

{¶9} 2) This case shall be remanded to the Attorney General for payment of the award;

{¶10} 3) This order is entered without prejudice to the applicants' right to file a supplemental compensation application pursuant to R.C. 2743.68;

{¶11} 4) Costs are assumed by the court of claims victims of crime fund.

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

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JAMES H. HEWITT III
Commissioner