

[Cite as *In re Timson*, 2003-Ohio-5510.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: JOHN W. TIMSON : Case No. V2002-50790
JOHN W. TIMSON : DECISION

Applicant : Anderson M. Renick, Magistrate
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{¶1} This matter came on to be considered upon applicant's appeal from the June 12, 2003, order issued by the panel of commissioners. The panel's determination reversed, in part, the March 24, 2003, final decision of the Attorney General, which granted applicant an award of reparations in the amount of \$3,019.50 as unreimbursed allowable expense. The panel also determined that no additional awards shall be paid to applicant until his economic loss exceeds the amount that was wrongfully paid to him, \$1,099.50.

{¶2} On August 15, 2003, a hearing was held on applicant's appeal. On August 18, 2003, applicant filed a motion to strike the Attorney General's brief.

{¶3} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The panel found, upon review of the evidence, that a portion of the award of reparations that was paid to applicant represented reimbursement for items that were not recoverable as

allowable expense pursuant to R.C. 2743.51(F).

{¶4} Pursuant to Civ.R. 53, the court appointed the undersigned magistrate to hear applicant's appeal.

{¶5} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final."

{¶6} At the hearing, applicant reiterated the arguments set forth in his brief wherein he raised ten "assignments of error." The majority of the issues addressed in applicant's brief express his dissatisfaction with the Attorney General's investigation and the timeliness of the appeal process. The first six "assignments of error" criticize either the investigation reports that were compiled by the Attorney General's investigators or their job qualifications. Applicant also asserts that the panel of commissioners failed to promptly rule on his motion for an "emergency award."

{¶7} Although applicant raised numerous issues at the hearing, the court's review of this matter is limited to the issues that were addressed in the panel's June 12, 2003, decision. With regard to the panel's ruling on applicant's March 19, 2003, motion to find the Attorney General in contempt for allegedly failing to comply with the November 15, 2002, order of the panel of commissioners, the magistrate finds that the panel properly determined that there was no evidence to support a contempt order.

{¶8} Applicant also contends that the panel improperly denied his April 8, 2003, motion for "emergency" housing and hip surgery because he was unable to obtain "free" hip surgery without financial assistance for housing. The panel determined that applicant's housing expense was not related to the criminally injurious conduct and that applicant is eligible for Medicaid or the Ohio Hospital Care Assurance Program (HCAP). Applicant did not present any evidence to counter the Attorney General's determination. Furthermore, the evidence suggests that applicant has not yet incurred the housing expense and there is insufficient evidence to show that applicant's housing expense would be medically necessary to treat a physical condition that is related to the criminally injurious conduct. As the panel noted in its decision, applicant may file a supplemental reparations application in the event that any related medical expense is not covered by either Medicaid or HCAP.

{¶9} The final decision of the Attorney General which granted applicant an award of reparations was issued pursuant to the November 15, 2002, decision of the panel of commissioners that determined that applicant should be reimbursed for all allowable expense incurred as a result of his travel to Florida to seek medical treatment. The portion of the Attorney General's March 24, 2003, final decision that was reversed by the panel of commissioners had granted applicant an award of reparations including \$1,099.50 for storage facility expense in Columbus, Ohio and for mailbox fees incurred during his travel to Florida. The panel determined that neither rent nor mail accommodations qualified as an allowable expense.

{¶10} R.C. 2743.51(F)(1) states in part: "'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 ***." Although applicant asserts that he rented the storage facility and mailboxes as a result of his travel to Florida to obtain medical treatment, the magistrate finds that these expenses were not reasonably needed accommodations that were related to applicant's medical care. Rather, the expenses for which applicant seeks reimbursement are day-to-day living expenses that are not directly related to the criminally injurious conduct and are not compensable under the Victims of Crime Compensation Act.

{¶11} Upon review of the file in this matter, the magistrate finds that the panel of commissioners was not arbitrary in finding that applicant did not show by a preponderance of the evidence that he was entitled to an award of reparations for the mail services and storage facility fees.

{¶12} Based on the evidence and R.C. 2743.61, it is the magistrate's opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, it is recommended that the decision of the three-commissioner panel be affirmed, and that applicant should not be granted any additional reimbursement until his economic loss exceeds the amount wrongfully paid, \$1,099.50.

{¶13} Additionally, applicant's August 18, 2003, motion to strike the Attorney General's brief is DENIED.

{¶14} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that*

finding or conclusion as required by Civ.R. 53(E)(3).

{¶15} On August 15, 2003, a hearing was held in this matter before a magistrate of this court. On September 4, 2003, the magistrate issued a decision wherein he found that applicant failed to prove by a preponderance of the evidence that he was entitled to an award of reparations for storage facility expense and mailbox fees and that applicant should not be granted any additional reimbursement until his economic loss exceeds the amount of the wrongfully paid award, \$1,099.50.

{¶16} Civ.R. 53 states that: "[a] party may, within fourteen days of the filing of the decision, serve and file written objections to the magistrate's decision." To date, applicant has not filed an objection to the magistrate's decision.

{¶17} Upon review of the claim file, and the magistrate's decision, it is the court's finding that the magistrate was correct in his analysis of the issues and application of the law. Accordingly, this court adopts the magistrate's decision and recommendation as its own.

{¶18} IT IS HEREBY ORDERED THAT:

{¶19} 1) The September 4, 2003, decision of the magistrate is ADOPTED;

{¶20} 2) The order of June 12, 2003, (Jr. Vol. 2250, Pages 58-65) is approved, affirmed and adopted;

{¶21} 3) Applicant's claim for storage expense and mailbox fees is DENIED and applicant shall not be granted any additional reimbursement until his economic loss exceeds the amount wrongfully paid, \$1,099.50;

{¶22} 4) Costs assumed by the reparations fund.

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ORDER

JUDGE

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