

[Cite as *In re Casto*, 2003-Ohio-2807.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: DAVID D. CASTO	:	Case No. V2002-52016
DAVID D. CASTO	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} This appeal came to be heard before this panel of three commissioners on March 20, 2003 at 11:55 A.M. upon the applicant’s December 26, 2002 appeal from the December 18, 2002 Final Decision of the Attorney General.

{¶2} On June 26, 2002, the Attorney General granted the applicant an emergency award in the amount of \$2,000.00. On October 28, 2002, the Attorney General granted the applicant an award of reparations in the amount of \$10,044.18 for unreimbursed allowable expense and work loss. On December 18, 2002, the Attorney General granted the applicant an award in the amount of \$4,705.35 for unreimbursed work loss. However, the Attorney General denied reimbursement of the purported Ensure and Nicoderm expenses. The applicant appealed the Attorney General’s Final Decision.

{¶3} The applicant, applicant’s counsel and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel’s consideration. Amanda Casto, the victim’s wife, briefly testified concerning her husband’s mental and physical condition

prior to and since the assault. Mrs. Casto explained that before the assault her husband was a full-time employee of the River Club restaurant. However, on April 11, 2002 her husband was kicked in the head whereby he suffered a hematoma of the brain. Mrs. Casto stated that as a result of the injury, David Casto sustained diminished mental capacity and thus is not able to function at the same level. Mrs. Casto advised the panel that prior to the assault her husband smoked two packs of cigarettes a day, but after the assault even though David was not smoking, his mind and body still responded as though he still smoked. Therefore, Mrs. Casto stated that her husband's physician placed him on the Nicoderm patch for his own protection.

{¶4} With respect to the Ensure, Mrs. Casto explained that David was unable to eat an adequate amount of food since he could not chew or swallow most foods; therefore David had to be placed on the Ensure supplement. Mrs. Casto stated that, prior to the incident, her husband ate at least two meals a day at work. Accordingly, Mrs. Casto explained that their food bill increased since David is now required to eat three meals a day at home in addition to the Ensure.

{¶5} After hearing Mrs. Casto's testimony, the Assistant Attorney General stated that the Attorney General's Final Decision should be reversed and that the claim should be remanded to the Attorney General for economic loss calculations since sufficient evidence was presented concerning the victim's medical need for Ensure and Nicoderm.

{¶6} From review of the file and with full and careful consideration given to the information presented at the hearing, this panel makes the following determination. We find that the applicant incurred unreimbursed allowable expense with respect to the Ensure and Nicoderm expenses. Therefore, the December 18, 2002 decision of the Attorney General shall be reversed

and the claim shall be remanded to the Attorney General for economic loss calculations and decision.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} 1) The December 18, 2002 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;

{¶9} 2) This claim is remanded to the Attorney General for economic loss calculations and decision;

{¶10} 3) This order is entered without prejudice to the applicant's 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

JAMES H. HEWITT III
Commissioner

STEVEN A. LARSON
Commissioner