

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: MICHAEL L. MC ILWAIN	:	Case No. V2003-40356
RUBY L. MC ILWAIN	:	<u>ORDER OF A THREE-</u>
MICHAEL L. MC ILWAIN	:	<u>COMMISSIONER PANEL</u>
Applicants	:	
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{¶1} This appeal came to be heard before this panel of three commissioners on October 9, 2003 at 10:25 A.M. upon Michael McIlwain’s April 23, 2003 appeal of the April 10, 2003 decision of the Attorney General.

{¶2} Michael L. McIlwain filed a reparations application seeking reimbursement for expenses incurred in relation to an October 21, 2000 assault. The Attorney General denied the applicants’ claim for an award of reparations contending that the victim was eligible for HCAP and that the victim’s dental expenses were not related to the criminally injurious conduct. Michael McIlwain filed an appeal of the Attorney General’s Final Decision.

{¶3} Michael McIlwain, his counsel, and an Assistant Attorney General appeared at the hearing and presented testimony and oral argument for the panel’s consideration. Michael McIlwain briefly testified that as a result of the October 2000 assault, he sustained severe dental injuries. The applicant explained that he visited his long-time family dentist, Dr. Phillips, approximately one month after the assault. Mr. McIlwain stated that he experienced some

discomfort immediately after he was struck in the mouth: However, since he had consumed a considerable amount of Tequila he was unable to feel any pain upon his arrival at the hospital. Mr. McIlwain advised the panel that Dr. Phillips had performed several root canals on most of his teeth from approximately June 1997-August 1999. The victim stated that Dr. Phillips had recommended the root canal procedure because it was less expensive and could possibly salvage most his teeth over the next fifteen years. Mr. McIlwain stated that after the criminally injurious conduct the severity of his injury necessitated extraction of all but four of his natural teeth. The victim explained that he currently wears upper and lower partials.

{¶4} The victim's attorney asserted that, based on the testimony presented and Dr. Phillips' letter, the claim should be allowed. Counsel informed the panel that Dr. Phillips has been paid for his services and hence Dr. Phillips has been reluctant to assist in this process. Nevertheless, counsel noted that Dr. Phillips' assistant has been helpful. Counsel asserted that the applicant's root canals were a sufficient resolution to the applicant's pre-assault dental problems. Counsel argued that the assault necessitated that most of the applicant's teeth be extracted fairly soon and not fifteen years later as originally expected after completion of the root canals. Counsel stated that after the root canals were finished in August 1999 the victim had no other dental issues until November 2000, which was one month after the assault. Counsel contended that, since the assault accelerated the extraction of the applicant's teeth, Mr. McIlwain should be reimbursed \$2,550.00 in allowable dental expense.

{¶5} However, the Assistant Attorney General maintained that the victim's claim for dental expenses incurred from November 2000 through January 2002 should be denied. The Assistant Attorney General conceded that it has been difficult obtaining additional information

from Dr. Phillips, but nevertheless the Assistant Attorney General asserted that no concrete evidence has been proffered that demonstrates within a reasonable degree of medical certainty that all the applicant's purported dental expenses were incurred as a result of the criminally injurious conduct. The Assistant Attorney General argued, based on Dr. Phillips' letter and the medical records provided, that extraction of most of the applicant's teeth was not required as a result of the assault, since the procedure would have eventually been performed.

{¶6} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. Mr. McIlwain testified that prior to the criminally injurious conduct, Dr. Phillips performed several root canals on his natural teeth. The applicant explained that Dr. Phillips advised him that having the root canals could possibly save his teeth for the next fifteen years. This panel is not inclined to believe that Dr. Phillips would have performed such an expansive procedure with the intent of having to extract all of the applicant's teeth in the near future. We believe even though the victim had prior damage to his teeth that Dr. Phillips had resolved that applicant's pre-assault dental issues for the time being with the root canal procedure, thereby making extraction of Mr. McIlwain's teeth not immediately necessary. Based upon the totality of the evidence presented, we find that the applicant incurred dental expense in the amount of \$2,550.00. Therefore, the April 10, 2003 decision of the Attorney General shall be reversed to award Michael McIlwain \$2,550.00 in unreimbursed dental expense.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} 1) The April 10, 2003 decision of the Attorney General is REVERSED to render judgment in favor of Michael McIlwain in the amount of \$2,550.00;

{¶9} 2) This claim is referred to the Attorney General pursuant to R.C.2743.191 for payment of the award;

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

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

CLARK B. WEAVER, SR.
Commissioner

DALE A. THOMPSON
Commissioner

STEVEN A. LARSON
Commissioner