

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: KEVIN A. WARD

KEVIN A. WARD

Applicant

Case No. V2004-61136

Judge Joseph T. Clark

DECISION

{¶1} This matter came on to be considered upon the Attorney General's appeal from the January 15, 2009, order issued by the panel of commissioners. The panel's determination reversed the final decision of the Attorney General, which had denied applicant's claim for an award of reparations based upon the finding that applicant's economic loss was eligible for reimbursement from Medicaid, a readily available collateral source.

{¶2} 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 applicant failed to present sufficient evidence to meet his burden.

{¶3} 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."

{¶4}Applicant was injured as a result of a hit-skip accident and he subsequently received the proceeds of an insurance settlement. The panel apportioned the proceeds of the insurance settlement between economic and non-economic loss pursuant to the holding in *In re Fout-Craig*, V93-27851tc (2-5-99). The panel determined that pursuant to *Fout-Craig*, ten percent of applicant's settlement constituted a collateral source while the remaining 90 percent was considered non-economic loss. The panel concluded that applicant was entitled to an award in the amount of \$1,949.94, which represents 90 percent of the amount that applicant was required to repay to Medicaid from the proceeds of his insurance settlement.

{¶5}At the judicial hearing, both applicant and the Attorney General argued that the *Fout-Craig* apportionment should have been applied to the net insurance proceeds, rather than to applicant's net economic loss. The court agrees.

{¶6}As an initial matter, and pursuant to the holding in *Fout-Craig*, the panel apportioned the proceeds of the insurance settlement between economic and non-economic loss. In this case, the panel determined that the insurance settlement proceeds should be apportioned 90 percent for non-economic loss and ten percent for economic loss. The economic loss apportionment should then be applied to applicant's net insurance recovery. *In re Kilburn*, V2008-30146jud (1-22-09). Applying the panel's apportionment, the amount of applicant's insurance proceeds that are considered to be a collateral source is \$828.38.

Gross Insurance Settlement	\$12,500.00
Attorney Fees	<u>- 4,216.16</u>
Net Insurance Recovery	\$8,283.84
Economic Loss Apportionment	<u> x</u> <u> .10</u>
Insurance Applied as Collateral Source	\$828.38

{¶7}The panel correctly determined that the portion of the insurance proceeds that were transferred to Medicaid did not constitute a readily available collateral source. *In re Dungey*, V92-49877jud (2-23-99). However, applicant's economic loss is reduced by \$2,000, the amount that was received from Med. Pay, in addition to the insurance proceeds that are deemed to be a collateral source. Accordingly, applicant is entitled to \$1,338.28 as reimbursable economic loss.

Medical Expense (Subrogation)	\$4,166.66
Med. Pay	-2,000.00
Insurance Applied as Collateral Source	<u>- 828.38</u>
Reimbursable Economic Loss	\$1,338.28

{¶8}Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicant had shown by a preponderance of the evidence that he was entitled to an award of reparations.

{¶9}However, based on the evidence and R.C. 2743.61, it is the court's opinion that the decision of the panel of commissioners must be modified to reflect the *Fout-Craig* apportionment that should be applied to applicant's net insurance proceeds.

JOSEPH T. CLARK
Judge

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ORDER

{¶10} Upon review of the evidence, the court finds the order of the panel of commissioners must be modified.

IT IS HEREBY ORDERED THAT:

{¶11}1) The order of January 15, 2009, (Jr. Vol. 2271, Pages 29-30) is modified such that judgment is rendered in favor of applicant in the amount of \$1,338.28;

{¶12}2) The claim is REMANDED to the Attorney General for payment of the award in accordance with this order;

{¶13}3) Costs assumed by the reparations fund.

JOSEPH T. CLARK
Judge

AMR/cmd

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Summit County Prosecuting Attorney and to:

Filed 4-30-09
Jr. Vol. 2272, Pg. 1
Sent to S.C. Reporter 12-15-11