

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: TITUS J. ARNOLD,
VICTORIA L. ARNOLD, and
EBONY L. CARTER,
Applicants.

Case No. V2005-80860

Commissioners:
Thomas H. Bainbridge, Presiding
Randi Ostry LeHoty
Lloyd Pierre-Louis

ORDER OF A THREE-COMMISSIONER PANEL

{¶1} On September 7, 2006, a panel of commissioners issued an order reversing the Final Decision of the Attorney General rendered on November 21, 2005. The panel found that: “the applicants have proven, by a preponderance of the evidence, that the decedent at the time of his death was providing financial support to his children and Ms. Carter.” The claim was remanded to the Attorney General for calculation of the economic loss sustained.

{¶2} On September 25, 2008, a second hearing was held before a panel of commissioners based upon the Final Decision of the Attorney General issued on February 1, 2008. The Attorney General determined the applicant, Ebony Carter, and her children did not incur dependents’ economic loss since money received from the Social Security Administration outweighed any loss of support they incurred as a result of the decedent’s death. Furthermore, the applicant failed to provide any evidence that she incurred expenses to replace the ordinary and necessary services performed by the

decedent for the benefit of his family prior to his death. Accordingly, applicants' claim for dependents' replacement services loss was also denied.

{¶3}After hearing all the testimony and considering all the information presented at the hearing, the panel determined that "insufficient evidence had been provided to make a firm and defensible calculation for dependents' economic loss." Whereupon, the applicant was directed to provide additional information, including but not limited to the decedent's W-2 form so the Attorney General could calculate dependents' economic loss.

{¶4}On August 6, 2009, a third hearing before a panel of commissioners was held at 9:40 A.M. The applicants' attorney Mark Poole attended, while Assistant Attorney General Amy O'Grady appeared on behalf of the state of Ohio.

{¶5}The applicant asserted the issue which must be considered is whether to take the decedent's, Mr. Arnold's, income into consideration when calculating dependents' economic loss. The Attorney General's argument is that the decedent's contribution of things of economic value should be limited to the child support he paid. The applicant reiterated that the decedent and the applicant, Ms. Carter, possessed a joint bank account, and that the decedent paid for rental furniture and the telephone bill. The applicant asserts the decedent's income at the time of his death should be used as the basis to calculate dependents' economic loss. The applicant introduced a letter written by applicant, Victoria Arnold, which was submitted in lieu of testimony and marked as Applicant's Exhibit 1. Finally, the W-2 form for 2004 was submitted which indicated the decedent earned \$18,919.00.

{¶6}The Attorney General submitted State's Exhibits A, B, and C to be introduced into evidence. State's Exhibit A was a time line prepared by Assistant Section Chief William Fulcher. State's Exhibits B and C were dependents' economic loss calculation booklets determining the loss the decedent's children suffered including or excluding the amount of \$50.00 that was received from Ms. Arnold while the decedent was attending school. However, the amount of collateral source benefits that the children are currently receiving is less than the financial support they received from the decedent prior to his death. The Attorney General contends that its calculations were based on the testimony presented at the panel hearing of September 7, 2006.

Accordingly, the Attorney General recommends that its decision of February 1, 2008 be affirmed. Whereupon, the hearing was concluded.

{¶7}R.C. 2743.51(I) in pertinent part states:

“(I) ‘Dependent’s economic loss’ means loss after a victim’s death of contributions of things of economic value to the victim’s dependents, not including services they would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death.”

{¶8}Black’s Law Dictionary Sixth Edition (1990) defines preponderance of the evidence as: “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.”

{¶9}Black’s Law Dictionary Sixth Edition (1990) defines burden of proof as: “the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.”

{¶10}From review of the file and with full and careful consideration given to the prior decisions of this court and the information and arguments presented at the hearing, we find the applicant, Ebony Carter, and the minor children have incurred dependent’s economic loss. In accordance with the holding in the September 7, 2006 order which found that the decedent was providing financial support for the applicant, Ebony Carter, and their children and that the decedent was the primary earner for the family, we find dependent’s economic loss should be calculated using the decedent’s W-2 income for 2004 of \$18,919.00 and the income he earned in 2005, until his death on April 13, 2005.

{¶11}We reach this decision based on the review of the testimony presented to prior panels of commissioners and the letters submitted by applicant, Victoria Arnold, the decedent’s mother. The decedent, a scholarship athlete, dropped out of college to “do the right thing” and support his young family. Therefore, we are convinced, by a preponderance of the evidence, that the decedent was using his earnings to support his family. Accordingly, the February 1, 2008 decision of the Attorney General is reversed.

Decision reversed.

IT IS THEREFORE ORDERED:

- 1) The February 1, 2008 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant, Ebony Carter and the minor children;
- 2) This claim is remanded to the Attorney General for calculation of dependent's economic loss in accordance with the direction given above;
- 3) This order is entered without prejudice to the applicants' right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

- 4) Costs are assumed by the court of claims victims of crime fund.

THOMAS H. BAINBRIDGE
Presiding Commissioner

RANDI OSTRY LE HOTY
Commissioner

LLOYD PIERRE-LOUIS
Commissioner