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NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

(Nebraska Crime Commission)

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## MINUTES OF THE CRIME VICTIM'S REPARATIONS COMMITTEE

August 19, 2016

The Crime Victim's Reparations (CVR) Committee met on Friday, August 19, 2016 at 9:00 am in the Crime Commission conference room, Nebraska State Office Building, 14<sup>th</sup> & M Streets, Lincoln, Nebraska. A legal notice of the meeting was published in the Lincoln Journal Star on August 5, 2016. An agenda of this meeting was available for public inspection during normal office hours at the Crime Commission office, Nebraska State Office Building, Lincoln, Nebraska.

### CALL TO ORDER

The meeting was called to order at 9:07 am by Joe Kelly, Chair. The following members were present: JoAnna Briggs, Jeff Davis, Rand Hansen, Joe Kelly, and Rita Sanders. The following members were excused: Fred Ruiz, Michelle Schindler, and Brian Wachman. Staff present: Bruce Ayers, Sher Schrader, and Mary Thomason.

### APPROVAL OF MINUTES

*A motion was made by Davis and seconded by Sanders to approve the minutes of the May 6, 2016 meeting. Motion carried by acclamation.*

### APPEALS

Claim #8-15-3689

Schrader reviewed the case and submitted case information. The claim is for \$2,788.21 for loss of wages, medical, mental health, and prescription expenses.

Discussion ensued between CVR Committee Members and CVR staff regarding the details of the claim.

The Committee place a call to the claimant at 9:14 am.

Chairman Kelly introduced himself.

*Approximately 1 minute after the call to the claimant was placed, while Chairman Kelly was introducing himself and explaining the Committee, the recording was interrupted. The recording resumed at 9:26 am as roll was being called for the Committee to go into Executive Session. The following is compiled from notes taken during the call.*

Claimant indicated that Shelby Schmitt from Bright Horizons was with her for moral support. Claimant explained that while she was not present at the time of the specific incident, she considered herself a victim in this case as she had to deal with all of the fallout from the incident on behalf of her daughter and son. She has had to go to counseling herself, missed work for doctor's visits for herself and her daughter, as well as missing work for court dates. She stated that she is still on medication for depression to help her deal with the incident, but has recently remarried and her spouse has insurance that has been helpful in that regard. She stated she does feel dependent upon the medication for her own well-being at this time. She stated that her own counseling is not as often in the last few months and it had been more regular just after the incident occurred.

Chairman Kelly thanked her for her time and explained that the Committee would review her testimony and a decision letter would go out to her within the next 10 business days.

*A motion was made by Hansen and seconded by Sanders to go into executive session at 9:26 am. Motion carried by acclamation. The recording resumed during roll call and remained recording as applicable throughout the remainder of the meeting.*

*A motion was made by Davis and seconded by Sanders to return from executive session at 9:34 am. Motion carried by acclamation.*

*A motion was made by Davis and seconded by Sanders to deny the appeal and uphold the decision of the Hearing Officer. Davis, Kelly, Sanders, and Briggs voted to uphold the decision of the Hearing Officer at 9:35 am. Hansen voted no on the motion. While the Committee does not deny that the claimant has suffered as a result of what happened to her daughter, she was not present at the time of the incident and therefore did not directly witness the incident, and is thus not eligible under the parameters of the program.*

Claim #12-15-3722

Schrader reviewed the claim and submitted case information. The claim is for \$5,532.43 in hospital, prescription, and other expenses.

Discussion ensued between CVR Committee members and CVR staff regarding the details of the claim. Chairman Kelly, from a prosecutorial perspective, provided a statement regarding misdemeanor vs. felony charges, how these types of incidents may be prosecuted in court, and how the statutes surrounding both of these types of crimes are written. This is a very difficult charging decision for prosecutors in how to proceed because of the individual circumstances. The jury would take the 'serious bodily injury' charge very seriously, and yet, how permanent is the injury. Davis, from a law enforcement perspective, would concur.

Hansen stated that it seems that the Committee should heavily rely on statute as far as a decision regarding this type of incident. Hansen requested that a copy of the statutes regarding felony and misdemeanor assault charges be available for the Committee in future cases.

The Committee placed a call to the claimant, his wife, and the victim (their son) at 9:46 am.

Chairman Kelly introduced himself. The Committee introduced themselves.

Chairman Kelly explained the Hearing process and asked the claimant and victim to give testimony.

The claimant explained that they read the definitions of felony assault and simple assault, and that they felt the injuries that their son suffered fell more in line with the felony assault definition. At the time of the incident the officer involved probably wasn't aware of the seriousness of the victim's injuries and that is the reason they are asking for reconsideration.

Chairman Kelly asked the victim if he is dealing with any issues at this time or if there is anything he expects to deal with in the future.

The victim explained that he is not dealing with any after affects at this time, nor does he expect to.

Chairman Kelly asked the victim to clarify if he lost teeth at the time of the incident.

The victim stated that he did not – braces put them back in place. The victim's mother, wife of the claimant, interjected that he did in fact have to have his wisdom teeth removed as a result of the break in his jaw. The victim concurred.

Chairman Kelly asked if there was anything else that the claimant would like to share.

The claimant stated that the medical bills were expensive, in gross amount of \$125,000. While they had insurance, these bills were very large for the victim.

Chairman Kelly explained that the Committee will make a decision based the interpretation of the existing guidelines on how the limited amount of money available will be disbursed, and that there is no dispute that someone is a victim and suffered greatly, due to no fault of his own.

Claimant's wife asked if the Committee is constrained by the determination of the officer on the police report or if they are able to make a different decision.

Chairman Kelly stated that no, they have looked at the record available and have examined the Nebraska statutes regarding the definitions of felony and misdemeanor assaults.

Claimant's wife thanked Chairman Kelly.

Chairman Kelly thanked them for their time and reiterated that they should hear from CVR staff with a decision within 10 days.

The claimant, his wife, and the victim thanked the Committee for their time and consideration.

*A motion was made by Davis and seconded by Sanders to go into Executive Session at 9:54 am. Motion carried by acclamation.*

*A motion was made by Davis and seconded by Sanders to return from Executive Session at 10:13 am. Motion carried by acclamation.*

*A motion was made by Davis and Hansen and seconded by Sanders to overrule the decision of the Hearing Officer and award an amount, to be determined by CVR staff, for eligible out-of-pocket expenses at 10:14 am. Chairman Kelly stated on the record that he will be opposed to the motion and that it is a reasonable position. However, today he is of the opinion that this incident was a misdemeanor assault, as defined by statute. Discussion continued amongst Committee members surrounding the various incidents and possible outcomes that could have occurred. Davis, Hansen, Sanders, and Briggs voted yes on the motion at 10:15 am. Kelly voted no on the motion.*

Mr. Hansen asked for clarifications on the wording of the decision of the Hearing Officer in the Blenkush case, regarding "...it is hereby ordered that the claim is denied per the directions of the CVR Committee on May 7, 2004, July 25, 2008, and July 1, 2011."

Staff explained that this reference is used for misdemeanor assault cases. Decreasing budgets in previous years caused the Committee to remove some crimes from those that are eligible for payment. The decision is explained in the letter to the claimant.

### **CVR Budget**

At 10:18 am, Ayers provided an overview of the CVR Budget including appropriations and sources of revenue as well as claims decisions for the previous fiscal year.

Discussion ensued surrounding the potential impact yet of the award maximum being raised to \$25,000.

### Other Business

#### Go Fund Me

Schrader provided the Committee a copy of what the Iowa Crime Victim's Assistance Division uses regarding Go Fund Me accounts, to bring attention to other funding sources that are potentially available to applicants and that decisions may have to be made in the future regarding this funding source. Discussion ensued amongst the Committee and staff regarding this funding source.

#### Funeral and Burial Expenses

Schrader asked the Committee for a recommendation regarding historical decisions by the program that food and alcohol are not eligible expenses regarding funerals.

*At 10:40 am a motion was made by Hansen and seconded by Sanders that for the purposes of funeral and burial expenses, payments for food, beverages, and flowers are not expenses which are eligible for reimbursement. The motion carried by acclamation.*

#### CVR Rules and Regulations – Proposed Updates

Schrader stated that staff is in process of completing its final review of proposed updates to the CVR Rules and Regulations and plan to submit them to the Committee for review and feedback at the October meeting.

*A motion was made by Davis and seconded by Sanders to adjourn the meeting. The motion carried by acclamation.*

There being no further business, the meeting was adjourned at 10:43 am. The next Crime Victim's Reparations Committee meeting will be held Friday, October 14, 2016 at 1:00 pm in the Crime Commission's conference room at the Nebraska State Office Building, 14<sup>th</sup> & M Streets, Lincoln, Nebraska.

Respectfully submitted,



Sher Schrader