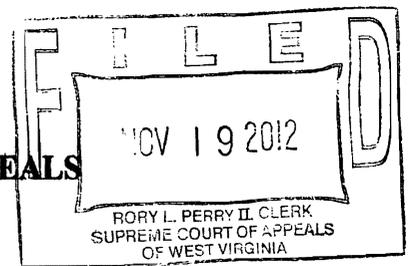


IN THE WEST VIRGINIA SUPREME COURT OF APPEALS



**STATE OF WEST VIRGINIA ex rel.,
ANGELA Y. SMITH,**

Petitioner below

v.

**WEST VIRGINIA CRIME VICTIMS COMPENSATION FUND and
THE COURT OF CLAIMS FOR THE STATE OF WEST VIRGINIA,**

Respondents.

PETITIONER'S BRIEF

ANGELA Y. SMITH,

Petitioner,

v.

Docket No.: 12-0117
(Crime Victims' Case No.: CV-09-0776-Y)

WEST VIRGINIA CRIME VICTIMS
COMPENSATION FUND and
THE COURT OF CLAIMS FOR
THE STATE OF WEST VIRGINIA,

Respondents.

Submitted for Petitioner by Counsel:
Mark McMillian (WV #9912)
Mark McMillian - Attorney at Law, L.C.
Boulevard Tower Suite 900
1018 Kanawha Boulevard, East
Charleston, West Virginia 25301
Telephone: (304) 720-9099 Fax: (304) 720-0290
Email: mark@markmcmillian.com

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PETITIONER'S BRIEF

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IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

**STATE OF WEST VIRGINIA, ex rel.
ANGELA Y. SMITH,**

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v.

Docket No.: 12-0117

**WEST VIRGINIA CRIME VICTIMS
COMPENSATION FUND,**

Respondent.

ASSIGNMENT OF ERROR

The Respondents' West Virginia Crime Victims Compensation Fund and the West Virginia Court of Claims erred in determining that the term *lost scholarship* as defined by §14-2A-3(m) (which includes “. . . other monetary scholastic assistance”) does not include unpaid student loans which, because of the death of the Petitioner's decedent was unable to use.

STATEMENT OF THE CASE

As fairly summarized in the Respondents' *Order* in case no.: CV-09-0776-Y, the following facts and procedural history are not in dispute. The Petitioner's decedent son, Donte Newsome, was the tragic victim of a shooting on July 5, 2008, wherein Mr. Newsome was killed by a Jeral Garner who was subsequently indicted for murder and is now imprisoned. Upon the application of the Petitioner (Claimant below) Angela Y. Smith was awarded unreimbursed medical expenses and funeral and burial costs. It is undisputed that Mr. Newsome was the innocent victim of crime (Appendix Pgs. 1-2). The present issue concerns the denial of unpaid student loans which the decedent, Mr. Newsome, had obtained in connection with his final year of studies at Marshall University, which the Petitioner and her husband (parents) were co-guarantors. After a hearing on that issue conducted before the Respondent, October 7, 2011, that

tribunal, by *Order* of December 27, 2011, denied the disputed portion of the Petitioner's claim determining that the statutory definition of "lost scholarship" did not embrace the claim and denied that portion of the requested relief (Appendix Pgs. 2-3). The Petitioner timely filed her *Petition for Writ of Certiorari*, which this Court granted. The Petitioner requests upon full review of this case that this Court find that she is entitled to the relief originally requested and direct the Respondents to award the same.

SUMMARY OF ARGUMENT

"'Lost scholarship' means a scholastic, academic award, stipend or other monetary scholastic assistance which has been awarded or conferred upon a victim in conjunction with a post-secondary school education program in which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct." West Virginia Code §14-2A-3(m), as amended. As discussed more fully below, that term, particularly when read *pari materia* with other pertinent provisions, clearly embraces the unpaid student loans which the Petitioner's son had been awarded and, because of his death, was unable to use.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This Court specified in its *Order* granting Certiorari that this matter would be decided upon the pleadings without oral argument. However, should the Court modify that position and order oral argument, the Petitioner, through counsel, will certainly avail herself to that opportunity.

ARGUMENT

Statutory Construction

In the construction of the legislative enactment, the intention of Legislature is to be determined, not from any single part, provision, section, sentence, phrase or word, but rather from

a general consideration of the act or statute in its entirety, Syl. Pt. 5, *Miller, Commissioner v. Wood*, Docket No.: 11-0815, ____ S.E.2d ____ (W.Va. 2012) citing Syl. Pt. 1, *Parkins v. Londeree*, 124 S.E.2d 471 (W.Va. 1962). “Statutes which relate to the same subject matter should be read and applied together so that the Legislature’s intention can be gathered from the whole of the elements.” Syl. Pt. 6, *Miller* citing Syl. Pt. 3 *Smith v. State Workmen’s Compensation Comm’r*, 219 S.E.2d 361 (W.Va. 1975).

With those authorities in mind, the Petitioner asks this Court to consider the applicable statutes together:

The Legislature finds and declares that a primary purpose of government is to provide for the safety of citizens and the inviolability of their property. To the extent that innocent citizens are victims of crime, particularly violent crime, and are without adequate redress for injury to their person or property, this primary purpose of government is defeated. The people of West Virginia are demonstrably peaceful, and, in comparison to the citizens of other states, suffer a lower crime rate. In establishing the West Virginia crime reparation act of 1981, the Legislature stated its findings that the provision of governmental services to prevent crime is not wholly effective and expressed its intent to establish a system of compensation for the victims of crime which would provide a partial remedy for the failure of the state to fully achieve this primary purpose of government (West Virginia Code §14-2A-2).

The Legislature now finds that the system of compensation established by the act as an experimental effort by the Legislature of this state on behalf of its people, after having been reviewed and perfected in its initial stages, should be continued and retained in the legislative branch of government as an expression of a moral obligation of the state to provide partial compensation to the innocent victims of crime for injury suffered to their person or property (West Virginia Code §14-2A-2).

“Economic loss” means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent’s economic loss and a dependent’s replacement services loss. Noneconomic detriment is not economic loss, however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term “economic loss” includes a lost scholarship as defined in this section (West Virginia Code §14-2A-3(e)).

“Lost scholarship” means a scholarship, academic award, stipend or other monetary scholastic assistance which had been awarded or conferred upon a victim in conjunction with a post-secondary school educational program and which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct (West Virginia Code §14-2A-3(m)).

In its order, the Respondents found:

Upon first glance, West Virginia Code §14-2A-3(m) “Lost scholarship” means a scholarship, academic award, stipend or other monetary scholastic assistance which had been awarded or conferred upon a victim in conjunction with a post-secondary school educational program and which the victim is unable to receive or use, in whole or part, due to injuries received from criminally injurious conduct (Appendix Pg. 2).

During argument, the court below [Judge Cecil] noted “[A]s I read the statute, I think its probably what was intended by the Legislature, is that something that’s actually awarded or conferred I’m troubled by the ‘award or conferred’ language in that section” (Appendix Pg. 15). During argument opposing counsel also advanced the following.

“[T]he issue is the plain meaning of the statute and I think that the plain meaning of the statute, I think its clear on its face. I agree that it does not need to be interpreted that I would point to the language ‘Stipend or monetary scholastic assistance which has been,’ I think its key here, ‘awarded or conferred.’

And that language to me under a dictionary definitions does not contemplate a loan. Awarded, conferred, it contemplates, I believe, an award, what it is. It’s something that’s a grant, something that’s not paid back with interest. I think it is what it is. I think its plain on its face.

However, I do leave it up to the court’s discretion. When you look at the overall purpose and intent that must be read from, you know, the purpose of an act in the statute, it may or may not be a case of first impression. I think it’s a close call but I think it’s my duty to point out that I think that the plain meaning of it clearly does not contemplate a loan” (Appendix Pgs. 14-15).

The Terms Awarded Or Conferred Are Not Inconsistent When Used In Connection With A Student Loan

The Respondents in this action substantially rely on the terms “awarded” or “conferred” as used in the statute for the proposition that those terms indicate something other than a loan. Even

in earlier jurisprudence emanating from this Court, there is reference to the awarding of a loan.

“The papers prove that Mrs. Tahaney got the loan by bidding; but say that the **loan was awarded** her as the value of her shares in default of bidders.” *Tahaney v. Wash. Nat. Bldg. & Loan Ass’n.*, 53 S.E. 791, 792 (W.Va. 1906) (emphasis added). See also, *Carter v. Bank of America, N.A.* (No.: 11-01584, D.D.C., 2012) “The Plaintiff make a variety of allegations about the allegedly fraudulent matter in which the loan was first issued. First, the Plaintiff states that the **loan was awarded** based solely upon credit scores and a ‘Stated Income’” (emphasis added).

The term *award* as applied to financial assistance, as contemplated by the statute, is applied both to assistance that requires repayment and those that do not.

Award letters tell you exactly how much financial support the school is able to provide for the upcoming year. The most common sources are:

Grants: Money that does not have to be repaid. Includes the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant (FSEOG), institutional grants, and state-sponsored grants.

Work-Study: Money earned by working, either on campus (for the school) or off campus (for a private nonprofit organization or public agency).

Student loans: Money that must be repaid. May include the Federal Stafford (subsidized and unsubsidized), Federal PLUS, Federal Grad PLUS, Federal Perkins, state loan programs, and private student loans.

Source: Sallie Mae https://www1.salliemae.com/get_student_loan, (emphasis added).

Focusing on the provisions of subsection (m) “other monetary scholastic assistance” the very institution implicated here, Marshall University, publishes the following, “In fact, approximately seventy-two percent (72%) of Marshall University undergraduate students receive **financial assistance** in the form of **grants, loans**, student employment and/or academic

scholarships. <http://www.marshall.edu/wpmu/sfa>. (emphasis added) (Appendix Pg. 21). West Virginia University also includes among its forms of “financial aid” “Financial aid primarily comes in four (4) basic forms: scholarships. . . , grants. . . , employment. . . loans. . . .” see <http://finaid.wvu.edu/aid>. Accordingly, the terms *monetary scholastic assistance*, as used in the statute, are intended to include that which is at issue here.

**The Tribunal Below Erroneously Reasoned That The Term Scholarship
Excludes Any Contractual Or Repayment Obligation**

The court below reasoned that “The key feature of these awards is that the student possesses the award and has some vested interest. Another key feature of these types of awards is that the student is not generally obligated to repay the award. Therefore, student loans or any other contractual obligations to repay a debt do not fall under the statute.” (Appendix Pg. 2). The Respondents’ position in that respect is not consistent with prevailing law or the financial assistance practices. 42 C.F.R. Part 62, *et. seq.* provides for a scholarship award program whereby the recipient undertakes an obligation to repay the scholarship award through in-kind service in specified areas or, as a consequence of failure to do so, the obligation to repay the monetary value of the education received plus additional liquidated damages. Section 62.2 of those rules (Definitions) defines *scholarship program participant* or *participant* as an “individual whose application to the scholarship program has been approved and whose contract has been accepted and signed by the secretary.” The referenced rule further provides that the monetary repayment obligation is not dischargeable in bankruptcy. See also, *Omaha Joint Elec. Apprenticeship and Training Comm. v. Stephens*, (Case No.: BK10-81870, Bankr. Neb., 2011), referring to “signed scholarship loan agreements.” See also, *In Re Kephart*, 167 B.R.767 (Bankr. W.D.N.Y., 1994), wherein the grant of a scholarship award was the subject of a repayment obligation considered by

a bankruptcy court. The written contract in that case enabled the United States a recovery of three times the “scholarship funds” awarded plus interest as set forth in the contract.

Hence the Respondents’ reliance on a repayment or contractual obligation as a factor distinguishing a scholarship from a loan is misplaced. As discussed above, our legislature clearly intended, through its broad language to include those forms of monetary assistance such as the one at issue here, without respect to whether it was awarded or conferred based on prior performance, the future performance or outright repayment by the recipient.

CONCLUSION

WHEREFORE, the Petitioner respectfully prays that the Respondents’ decision below be vacated, that this Court direct that the Petitioner’s damages as discussed above be found compensable along with such further relief this Court may find proper under law.

Angela Smith, Petitioner

By counsel



Mark McMillian (WV Bar No. 9912)
Boulevard Tower - Suite 900
1018 Kanawha Boulevard, East
Charleston, West Virginia 25301
Telephone No.: (304) 720-9099
Email: mark@markmcmillian.com

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STATE OF WEST VIRGINIA, ex rel.
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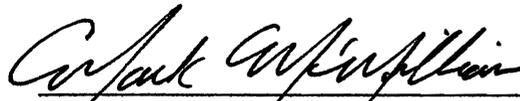
Docket No.: 12-0117

WEST VIRGINIA CRIME VICTIMS
COMPENSATION FUND,

Respondent.

CERTIFICATE OF SERVICE

Undersigned counsel for the Petitioner hereby certifies that a true and exact copy of the accompanying *Petitioner's Brief* was served upon, Darrell McGraw, West Virginia Attorney General, by U.S. Mail to the Office of the Attorney General, West Virginia State Capitol, Building 1, Room 26-E, Charleston, West Virginia, 25305, and by U.S. Mail to the West Virginia Court of Claims and Crime Victims Compensation Fund, 1900 Kanawha Boulevard, East, Room W-334, Charleston, West Virginia, 25305-1610, this the 19th day of November, 2012.



Mark McMillian (WV #9912)
Mark McMillian - Attorney at Law, L.C.
Boulevard Tower Suite 900
1018 Kanawha Boulevard, East
Charleston, West Virginia 25301
Telephone: (304) 720-9099 Fax: (304) 720-0290
Email: mark@markmcmillian.com