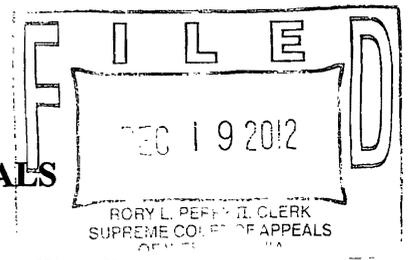


**BEFORE THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA**



State of West Virginia ex rel. Angela Y. Smith,

Petitioner,

V.

NO. 12-0117

**West Virginia Crime Victims Compensation Fund
and The Court of Claims for the State of West Virginia**

Respondents.

**BRIEF OF THE WEST VIRGINIA CRIME VICTIMS COMPENSATION FUND AND
THE COURT OF CLAIMS FOR THE STATE OF WEST VIRGINIA**

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**BRIEF OF WEST VIRGINIA CRIME VICTIMS COMPENSATION FUND AND THE
COURT OF CLAIMS FOR THE STATE OF WEST VIRGINIA**

NOW COMES the Respondent, West Virginia Crime Victims Compensation Fund and the Court of Claims for the State of West Virginia (Court of Claims), by counsel pursuant to Rule 14(d) of the West Virginia Rules of Appellate Procedure, and files this brief pursuant to the order of this Court dated October 18, 2012, issuing a writ of certiorari.

PRELIMINARY STATEMENT

The underlying Petition for Writ of Certiorari seeks to review an Order of the Court of Claims entered on December 27, 2011, which denied the Petitioner Angela Y. Smith's claim to recover unpaid student loans owed by the Petitioner at the time of her son's death as an innocent victim of crime under the West Virginia Crime Victims Compensation Fund. Respondents the West Virginia Crime Victims Compensation Fund and The Court of Claims for the State of West Virginia represent that it has properly interpreted the term "lost scholarship" as defined by West Virginia Code §14-2A-3(m) and denied Petitioner's claim for unpaid student loans.

STATEMENT OF FACTS

The Petitioner, Angela Y. Smith's son, 25-year-old Donte Newsome, a student at Marshall University, was the tragic victim of criminal conduct in Huntington on July 5, 2008. He was shot and killed by the offender, Jeral Garner, who was indicted for murder.

PROCEDURAL HISTORY

On December 7, 2009, Petitioner filed an application for an award under the West Virginia Crime Victims Compensation Act. The report of the claim investigator, filed July 23, 2010, recommended an award of \$7,251.38 be granted, to which Petitioner filed a response in disagreement, seeking an additional award. An order was issued on September 23, 2010, granting an award of \$8,184.99 for unreimbursed medical expenses, funeral and burial costs. Petitioner filed a request for hearing on October 26, 2010, which came for hearing on October 7, 2011. The primary issue at that hearing was whether the reimbursement of student loans could also be made within the provisions of the Crime Victims Compensation Act. By order, the Court of Claims held that

Upon first glance, W. Va. Code §14-2A-3(m) would appear to support the Claimant's position that lost scholarship in fact does refer to student loan payments. But a closer reading of the statute shows that the intent of the legislature was to allow compensation for scholarships awarded based on merit or other award-specific factors. 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 page 2)

In the instant action, the Petitioner has asked this Court to review the action of the Court of Claims.

STANDARD OF REVIEW

Pursuant to W. Va. Code §53-3-2 (2008), certiorari lies to review the judgments or orders of inferior tribunals. This Court has previously stated that “[a] writ of certiorari will lie from an inferior tribunal, acting in a judicial or quasi-judicial capacity, where substantial rights are alleged to have been violated and where there is no other statutory right of review given.” Syllabus Point 1, *Foster Foundation v. Gainer and the West Virginia Court of Claims*, 228 W.Va. 99, 717 S.E.2d 883 (W. Va. 2011), citing Syllabus Point 4, in part, *North v. Board of Regents*, 160 W.Va. 248, 233 S.E.2d 411 (1977).

Where a Writ of Certiorari is an appropriate mechanism to challenge the advisory opinion of the Court of Claims, then the standard of review is *de novo*. *State ex rel. Prosecuting Attorney of Kanawha County, West Virginia v. Bayer Corp.*, 223 W. Va. 146, 672 S.E.2d 282 (2008). A *de novo* or independent review of the law in this matter confirms that the Court of Claims ruling was correct.

ARGUMENT

Petitioner assigns only one error to the Court of Claims ruling. Petitioner asserts that the Court of Claims improperly ruled that student loans or any other contractual obligations to repay a debt do not fall under the Crime Victims Compensation Statute and went against the intent of the Legislature.

This Court has previously held that “Where a statute is of doubtful meaning, the contemporaneous construction placed thereon by the officers of government charged with its execution is entitled to great weight, and will not be disregarded or overthrown unless it is clear that such construction is erroneous.” Syllabus point 4, *Hawkins v. West Virginia Department of Public Safety*, 223

W. Va. 253, 672 S.E.2d 389 (2008), citing to Syllabus point 7, *Evans v. Hutchinson*, 158 W.Va. 359, 214 S.E.2d 453 (1975). See also Syllabus Point 3, *State of W. Va. ex. rel. ACF Industries, Inc., v. Vieweg*, 204 W.Va. 525, 514 S.E.2d 176 (1999) (“Where a statute is of doubtful meaning, the contemporaneous construction placed thereon by the officers of government charged with its execution is entitled to great weight, and will not be disregarded or overthrown unless it is clear that such construction is erroneous.”); *Smith v. State Workmen’s Compensation Commissioner*, 159 W.Va. 108, 219 S.E.2d 361 (1975); Syllabus Point 4, *Security National Bank & Trust Co., v. First W. Va. Bancorp., Inc.* 166 W.Va. 775, 277 S.E.2d 613 (1981) (“Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous.”).

W. Va. Code §14-2A-5 provides:

Any judge of the court of claims individually, or the court of claims en banc, or any court of claims commissioner appointed pursuant to section six of this article, shall have jurisdiction to approve awards of compensation arising from criminally injurious conduct, in accordance with the provisions of this article, if satisfied by the preponderance of the evidence that the requirements for an award of compensation have been met.

The Court of Claims is charged with the administration of the Crime Victims Compensation Act, and therefore, the construction of W. Va. Code §14-2A-3(m) by the Court of Claims should be given great weight unless this Court finds that the construction is clearly erroneous or outside of the legislative intent.

W. Va. Code §14-2A-2 describes legislative findings, purpose and intent of the Crime Victims Compensation Act. It states, in part:

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 section further goes on to state that the Crime Victims Compensation Act “should be continued and retained in the legislative branch of government as an expression of moral obligation of the State to provide **partial compensation** to the innocent victim of crime for injury suffered to their person or property.” (emphasis added).

W. Va. Code §14-2A-3(m) provides

‘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 the injuries received from criminally injurious conduct. (emphasis added)

While W. Va. Code §14-2A-2 does include some property rights within the purpose and intent of the Crime Victims Compensation Act, it is clear from W. Va. Code §14-2A-3(m) what the intent of the Legislature was in regards to the definition of “lost scholarship.” W. Va. Code §14-2A-3(m) delineates that “lost scholarship” means scholarship, academic award stipend or other monetary scholastic assistance which has been awarded or conferred upon an innocent victim of crime. Neither the word award or confer contemplates a loan. Award is defined as to give as due or merited; assign or bestow (Source <http://dictionary.reference.com/browse/award?s=t>). Confer is defined as to bestow upon as a gift, favor, honor, etc. (Source <http://dictionary.reference.com/browse/confer?s=t>). A student receiving a scholarship, academic award or stipend is not generally obligated to repay such an award.

Further, scholarships, academic awards and stipends are generally awards given for scholastic achievement. “Other types of monetary scholastic assistance,” as used in W. Va. Code §14-2A-3(m), could include grants and work study programs. Both grants and work study programs are similar to the items specifically mentioned in the definition of “lost scholarship” in that the student who receives them is not obligated to repay them.

Based upon the fact that scholarships, academic awards and stipends are awards that a student is not generally obligated to repay and that there are other forms of monetary scholastic assistance available to students that the student is not obligated to repay, it seems clear that student loans or any other contractual obligations to repay a debt do not fall under W. Va. Code §14-2A-3(m).

While universities do include student loans among the types of financial assistance that are available to students, the Legislature specifically included only those forms of financial assistance that a student is not generally obligated to repay in the definition of “lost scholarship” found in W. Va. Code §14-2A-3(m). Therefore, since there are other forms of monetary assistance that may be awarded to a student that the student is not obligated to repay, it is logical that student loans do not fall under the definition of lost scholarship as contained in W. Va. Code §14-2A-3(m).

CONCLUSION

In this case, the Petitioner’s only assignment of error is that the Court of Claims improperly ruled that student loans do not fall under the Crime Victims Compensation Statute. The Court of Claims ruled that the definition of lost scholarship in the Crime Victims Compensation Act shows that the intent of the Legislature was to allow for the compensation of scholarships awarded based on merit or other

award-specific factors that the victim was unable to receive or use due to criminally injurious conduct. This Court has previously ruled that when the Court is required to review an interpretation of a statute by a state agency, interpretations of statutes by bodies charged with their administration should be given great weight unless clearly erroneous. While the statute does provide that “other monetary scholastic assistance” can be included in the definition of “lost scholarship,” it is clear from the content of the remainder of the definition that the legislature intended this definition to apply to awards that a student is generally not obligated to repay. There are other forms of monetary assistance, such as grants and work study programs, that may be awarded to a student that the student is not obligated to repay, therefore it is clear that student loans do not fall under the definition of lost scholarship.

WHEREFORE, for the reasons set forth herein, the Respondents, West Virginia Crime Victims Compensation Fund and The Court of Claims of the State of West Virginia, respectfully request that this Court deny Petitioner’s Petition for Writ of Certiorari.

Respectfully submitted,

West Virginia Crime Victims Compensation Fund and
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by Counsel


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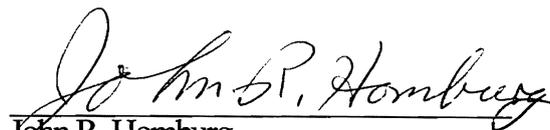
Respondents.

CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that on the 19th day of December, 2012, a true copy of the foregoing “**Brief of the West Virginia Crime Victims Compensation Fund and The Court of Claims for the State of West Virginia**” was served upon the following by depositing the same, postage prepaid, in the United States Mail:

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