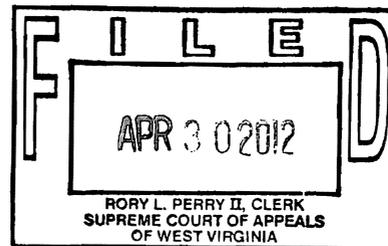


**BEFORE THE SUPREME COURT OF APPEALS**

**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.**

**RESPONSE OF THE WEST VIRGINIA CRIME VICTIMS COMPENSATION FUND  
AND THE COURT OF CLAIMS FOR THE STATE OF WEST VIRGINIA, TO PETITION  
FOR WRIT OF CERTIORARI**

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

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

**V.  
West Virginia Crime Victims Compensation Fund  
and The Court of Claims for the State of West Virginia,  
Respondents.**

**NO. 100163**

**RESPONSE OF WEST VIRGINIA CRIME VICTIMS COMPENSATION FUND AND  
THE COURT OF CLAIMS FOR THE STATE OF WEST VIRGINIA, TO PETITION FOR  
WRIT OF CERTIORARI**

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 response in opposition to the Petition for Writ of Certiorari filed on or about January 26, 2012.

**PRELIMINARY STATEMENT**

The 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 represents 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)

It is from this ruling that Petitioner brings its Petition for Writ of Certiorari.

## 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*, 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 3, *State ex rel. ACF Industries, Inc., v. Vieweg*, 204 W.Va.

525, 514 S.E.2d 176 (1999), citing to Syllabus point 7, *Evans v. Hutchinson*, 158 W.Va. 359, 214 S.E.2d 453 (1975); Syllabus point 8, *Smith v. State Workmen's Compensation Commissioner*, 159 W.Va. 108, 219 S.E.2d 361 (1975). See also *Security National Bank & Trust Co., v. First W. Va. Bancorp., Inc.* 166 W.Va. 775, 277 S.E.2d 613 (1981).

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 interpretation of W. Va. Code §14-2A-3(m) by the Court of Claims should be given great weight unless this Court finds that the interpretation 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.

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. 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 are 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 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.

### **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  
The Court of Claims of the State of West Virginia  
*by Counsel*

  
\_\_\_\_\_  
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**APPENDIX  
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*Order* of the Court of Claims In Re: Angela Y. Smith (Dec. 27, 2011) .....11

IN THE COURT OF CLAIMS OF THE STATE OF WEST VIRGINIA

IN THE MATTER OF:

Angela Y. Smith

(CV-09-0776-Y)

O R D E R

Claimant appeared in person and by counsel, Mark McMillian, Attorney at Law.

Harden C. Scragg, Jr., Assistant Attorney General, for the State of West Virginia.

CECIL, JUDGE:

An application of the Claimant, Angela Y. Smith, for an award under the West Virginia Crime Victims Compensation Act, was filed December 7, 2009. The report of the Claim Investigator, filed July 23, 2010, recommended that an award of \$7,251.38 be granted, to which the claimant 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 and funeral and burial costs. The Claimant's request for hearing was filed October 26, 2010. This matter came on for hearing October 7, 2011, Claimant appearing in person and by counsel, Mark McMillian, Attorney at Law, and the State of West Virginia by counsel, Harden C. Scragg, Assistant Attorney General.

On July 5, 2008, the Claimant's 25-year-old son, Donte Newsome, was the tragic victim of criminal conduct in Huntington, Cabell County. The Claimant's son was shot and killed by the offender, Jeral Garner, who was indicted for murder.

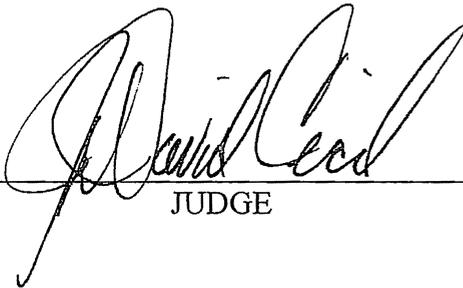
It is undisputed that the Claimant's son was an innocent victim of crime. Moreover, this Court's initial Order granted payments to medical providers and reimbursement of funeral and burial expenses which totaled \$8, 184.99. At issue now is whether the reimbursement of student loans can also be made within the provisions of the Crime Victims Compensation Act.

At the hearing of this matter, counsel for the Fund argued that the statute is clear on its face, that W.Va. Code §14-2A-3(m) defines "lost scholarship" as 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." Counsel for the Fund maintains that student loans do not fall into the same category as awards for scholastic achievement. Counsel for the Claimant takes a position opposite that of the State. Claimant argues that the statute's clear intent was to allow compensation for essentially all financial assistance, including loans. (Transcript, page 5.) The Court regrettably cannot accept this interpretation of the statute.

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. The Court is of the opinion that this is the plain meaning of the statute and agrees with the State's argument.

The tragic loss of the Claimant's son, especially at such a young age, is indeed grievous. What the family has suffered is unimaginable. Nonetheless, the Court is constrained by the evidence to stand by its previous ruling; therefore, this claim must be, and is hereby, denied.

ENTER: 12-27-11  
DATE

  
JUDGE

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

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

**Petitioner,**

**V.**

**NO. 12-0117**

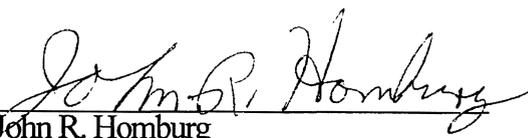
**West Virginia Crime Victims Compensation Fund  
and The Court of Claims for the State of West Virginia**

**Respondents.**

**CERTIFICATE OF SERVICE**

The undersigned attorney does hereby certify that on the 30<sup>th</sup> day of April, 2012, a true copy of the foregoing “**Response of the West Virginia Crime Victims Compensation Fund and The Court of Claims for the State of West Virginia, To Petition for Writ of Certiorari**” was served upon the following by depositing the same, postage prepaid, in the United States Mail:

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**John R. Homburg  
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**West Virginia Crime Victims Compensation Fund and The Court  
of Claims for the State of West Virginia**