

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1147 – 2006
	:	
vs.	:	CRIMINAL DIVISION
	:	
WALTER APKER,	:	
Defendant	:	Petition to Determine Restitution

**OPINION AND ORDER**

Before the Court is a legal issue raised by Defendant in opposing the Commonwealth's Petition to Determine Restitution. Although Defendant was sentenced on February 8, 2007, to ten days to eighteen months incarceration, followed by 42 months probation supervision, on one count of indecent assault and one count of corruption of a minor, the issue of restitution was deferred by agreement of both sides, pending further hearing. That hearing was finally convened on August 20, 2008, at which the Commonwealth presented the claim by the minor victim's father for reimbursement of sums he paid to Eastern Idaho Behavioral Health Center, representing, according to his testimony, 40% of amounts paid by the Department of Health for counseling expenses incurred by his daughter. While testimony has not been completed, it was agreed by both sides that prior to holding a second hearing, the court would decide the legal issue raised by Defendant: whether the victim's father is a "victim" entitled to restitution. A briefing schedule was issued and Defendant filed a brief on September 4, 2008. The Commonwealth did not file a responsive brief.

Defendant argues that he cannot be ordered to pay restitution to the victim's father because he is not himself a "victim." The definition of victim is set forth in the Crimes Code and the Sentencing Code. Section 1106 of the Crimes Code provides for the payment of restitution as follows:

- (a) GENERAL RULE.-- Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime, the

offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.

...

h) DEFINITIONS.-- As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"VICTIM." As defined in section 479.1 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929. The term includes the Crime Victim's Compensation Fund if compensation has been paid by the Crime Victim's Compensation Fund to the victim and any insurance company that has compensated the victim for loss under an insurance contract.

18 Pa.C.S. Section 1106. The Sentencing Code provides:

(c) MANDATORY RESTITUTION.-- In addition to the alternatives set forth in subsection (a) of this section the court shall order the defendant to compensate the victim of his criminal conduct for the damage or injury that he sustained. For purposes of this subsection, the term "victim" shall be as defined in section 479.1 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929.

42 Pa.C.S. Section 9721. Since Section 479.1 of the Administrative Code of 1929 was repealed in 1998, however, courts are left with less than desirable guidance on the matter.<sup>1</sup>

Our appellate courts have nevertheless concluded that restitution is to be paid only to the direct victim of a crime, and not to third parties, *see, e.g., Commonwealth v. Langston*, 904 A.2d 917 (Pa. Super. 2006) (“The mandatory payment of restitution pursuant to Section 1106 of the Crimes Code is limited to the direct victim and not to third parties...”), and Defendant relies upon such cases in opposing the instant restitution request. The Court believes Defendant’s reliance on these cases is misplaced, however.

In *Langston*, *supra*, the Crime Victim’s Compensation Fund had paid \$20,000 to a baby whose parents had been killed as a result of the defendant’s homicide by vehicle. The Commonwealth’s request for restitution to reimburse the fund was denied on the basis that

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<sup>1</sup> *See Commonwealth v. Opperman*, 780 A.2d 714, 719 (Pa. Super. 2001) (“The definition of victim as provided for in The Administrative Code of 1929 no longer exists as the most recent statute incorporating that definition has been abolished. As a result, our review of this case is limited to the definition of victim as set forth in the Crimes Code and the Sentencing Code.”).

while the baby had been “undoubtedly "victimized" by appellant in the tragic loss of his parents, he is not a victim for restitution purposes as provided by statute. The mandatory payment of restitution pursuant to Section 1106 of the Crimes Code is limited to the direct victim and not to third parties, including family members, who shoulder the burden of the victim's losses.” *Id.* at 924. And, in Commonwealth v. Opperman, 780 A.2d 714 (Pa. Super. 2001), State Farm Insurance sought reimbursement for amounts it had paid to the parents of a victim of homicide by vehicle as settlement of a wrongful death claim. The Court held that restitution was not proper because monies paid under the Wrongful Death Act were for damages of the parents themselves and not of the victim of the wrongful death. *Id.* In the instant case, Defendant argues that “father is seeking reimbursement for damages that he has incurred, not loss suffered by the direct victim of Apker’s criminal conduct.” Defendant’s Brief at p. 4.

While the Court agrees with Defendant that indirect victims may not be reimbursed by a restitution order, the Court believes this case is not a case where an indirect victim is seeking reimbursement. Rather, the amounts being sought were paid for counseling *of the victim*, which is alleged to have been the *direct result* of the defendant’s criminal conduct.<sup>2</sup> Were the victim over eighteen years of age, she would have been responsible for payment of those expenses and clearly entitled to restitution. Her father paid them, however, only because she is under the age of eighteen and he is legally obligated to pay her expenses.<sup>3</sup> The Court thus sees him as merely a “substitute” for the victim, rather than an indirect victim seeking payment in his own right, and payment of these expenses would not, therefore, be a payment to a third party in the sense of that term as it has been used in the cases which deny restitution claims.

Accordingly, the Court will allow the Commonwealth to proceed in this matter, and further hearing will be scheduled.

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<sup>2</sup> Whether the Commonwealth will eventually show the requisite causal link between the defendant’s conduct and the counseling expenses remains to be seen.

<sup>3</sup> Indeed, to deny the claim in this case might very well raise an equal protection argument.

**ORDER**

AND NOW, this 1<sup>st</sup> day of October 2008, the Court Scheduling Technician is requested to reschedule the restitution hearing in this matter. It is anticipated that a period of 2 hours will be required.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Court Scheduling Technician  
DA  
Christopher Williams, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson