

Precedent decision 03-03

**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of:

H.S., filed by

K.M.

Application No: 679418

Precedent Decision No. 03-03

A telephone hearing on this application was held on June 10, 2003, in Sacramento, California, by Richard P. Fisher, Hearing Officer, California Victim Compensation and Government Claims Board (Board). Applicant K.M., mother of victim H.S. (DOB 6-10-89), took part in the hearing via telephone from New York and testified under oath. K.M.'s attorney, Stephanie Golden, also took part in the hearing via telephone from New York. The hearing was closed to the public pursuant to Government Code section 13963.1.

Claim History

The application was received on November 6, 2001, and is based on allegations of child abuse and endangerment made by H.S. against her father, T. S. H.S. was previously determined to be eligible for compensation under the Victim Compensation Program (program).³⁶ The allegations of abuse and endangerment made by H.S. were denied by T. S. The allegations arose during marital dissolution proceedings involving K.M. and T. S. Contested issues surrounding H.S.'s custody and visitation periods arose and the Family Law Court in New York ordered a psychological evaluation of the family. Marion Gindes, Ph.D., conducted the evaluation.

The current appeal concerns a request by K.M. for reimbursement from the program for some of the costs incurred as a result of Dr. Gindes's psychological evaluation of the family. K.M.'s request was recommended for denial and she timely appealed that recommendation on H.S.'s behalf

³⁶ Because the application was filed before the effective date of the current statute, Statutes 2002, chapter 1141 (Senate Bill 1423, Chesbro), all references are to the Government Code sections in effect on or before December 31, 2002.

Summary of Issues

Staff recommended that the application be denied because the psychological services performed by Dr. Gindes did not appear to be pecuniary losses that arose as a direct result of the qualifying crime.

Findings of Fact

K.M. and T. S. were married in 1988 and had their daughter, H.S., on June 10, 1989. Beginning in 1997, the couple began seeing less and less of each other because T. S.'s career opportunities took him away from the family's home in New York to Los Angeles. K.M. and H.S. eventually moved to Los Angeles and joined their father. But K.M. continued to shuttle back and forth between Los Angeles and New York and never appeared to fully settle down in the Los Angeles area. The marriage between K.M. and T. S. deteriorated between 1997 and 2000 and T. S. filed for divorce in the summer of 2000. He and K.M. stopped living together at that time. H.S. divided her time between her parents during the period of their physical separation. Eventually, K.M. moved back to New York in October 2001. That move focused K.M. and T. S. on the custody and living arrangements of H.S., as did the allegations made by H.S. regarding inappropriate behavior by T. S. toward her.

During the divorce proceedings, H.S. told K.M. and others that when she had lived alone with her father in Los Angeles he had occasionally walked around the house naked. H.S. also reported that T. S. had masturbated³⁷ in her presence. The allegations were investigated by both California and New York child protective agencies. At least one instance of child abuse was substantiated, but others were not. No criminal charges were ever brought against T. S. in California or New York based on the allegations made by H.S. In the end, the Superior Court of California awarded joint legal custody of H.S. to both of her parents and K.M. was awarded primary physical custody. K.M. was also given permission to move to New York with H.S. and T. S. was allowed supervised visits with H.S.

The New York Family Law Judge assigned to the case sought an opinion from Dr. Gindes regarding visitation and therapeutic services that would be helpful for H.S. and her parents. Pursuant to court order, Dr. Gindes met with K.M. and H.S., and spoke with T. S. over the phone. Dr. Gindes spent a total of 15.55 hours consulting with the family members. With respect to her psychological evaluation, Dr. Gindes wrote that her report was being submitted in compliance with the Order issued by Judge Susan K. Knipps of the Family Court of the State of New York. The court order required Dr. Gindes to "interview the parents, child and any other collateral sources" that Dr. Gindes deemed appropriate and to "render an opinion regarding visitation and/or therapeutic services" that may be helpful to the family.

After receiving K.M.'s request for compensation for a \$500.00 portion of Dr. Gindes's \$3,000.00 evaluation fee, Board staff wrote to Dr. Gindes and asked her to

³⁷ When questioned about this serious allegation, H.S. explained that Thierry S. would "scratch himself" in her presence.

fill out and return an Initial Treatment Plan regarding her treatment of H.S. On May 15, 2003, Dr. Gindes wrote to the Board and explained the nature of her professional relationship with H.S. She states that, "I received a request to complete a Treatment Plan for [H.S.]. I have never served as [H.S.]' therapist. I was appointed by the Court to conduct an evaluation with respect to a visitation dispute. I am returning the form, without completing it." Dr. Gindes makes it clear that in her professional opinion, her evaluation of the family was not therapeutic and was not ordered to ameliorate the effects of alleged criminal wrongdoing taking place within the family. Her interviews and discussions with the family were *evaluative* not *therapeutic*, and they were not necessary as a direct result of the qualifying crime.

During the hearing, K.M. and her attorney Ms. Golden argued that Dr. Gindes provided mental health counseling that is compensable under the program because, notwithstanding Dr. Gindes's written comments, her evaluation was more in the nature of therapy and less in the nature of an evaluation. In particular, Ms. Golden argued that the evaluation undertaken by Dr. Gindes was a "forensic evaluation" to determine whether T. S. would be allowed to have visitation rights with H.S. She argued that the evaluation should not be seen as a mere visitation or child-custody evaluation because the issue before the Family Court was whether T. S. presented a threat to H.S. such that a protective order should issue. In other words, Ms. Golden argued that Dr. Gindes undertook a *therapeutic evaluation* that was designed to protect H.S. and provide the framework for her mental health healing over time. It was not an evaluation that was designed to establish the mere mechanics of T. S.'s visitation rights.

Based on the information provided by K.M. and Ms. Golden during the hearing and on the documentary evidence contained in the Board's files, substantial evidence supports each of the following findings of fact:

1. Marion Gindes, Ph.D., conducted a court-ordered psychological evaluation of K.M., T. S. and H.S. between October 17, 2002, and March 3, 2003. The purpose of her evaluation of the family was to render an opinion regarding future visitations between H.S. and T. S. and to identify therapeutic services that might be useful to the family in the future.
2. Dr. Gindes at no time served as the therapist for K.M., T. S. or H.S.
3. Dr. Gindes's psychological evaluation of the family did not address the mental health needs of either K.M. or H.S. that arose because of the inappropriate behavior of T. S.
4. In her report, Dr. Gindes neither refers to a "crime" nor leaves the impression that any criminal behavior or allegations of criminal behavior played any part in her evaluation of K.M., T. S. and H.S.

Determination of Issues

The Board shall approve an application for assistance if a preponderance of the evidence shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss. (Gov. Code, § 13964(a).) Applicants have the burden of

proof on all issues necessary to establish their eligibility for program compensation. (Gov. Code, § 13964(a); Cal. Code of Regs., tit. 2, § 647.32³⁸.)

Based on Findings of Fact Nos. 1 through 4, it is determined that K.M., on behalf of H.S., has clearly failed to meet her burden of establishing that the expenses she incurred as a result of Dr. Gindes's psychological evaluation are compensable under the program. (Gov. Code, § 13964(a); Reg., § 647.32.) Dr. Gindes spent nearly five hours in discussion with H.S. and yet wrote to the Board that she had "never served" as H.S.'s therapist. The explanation for this apparent incongruity is that Dr. Gindes was not providing mental health counseling to K.M. or H.S. for issues that arose as a direct result of a qualifying crime. Rather, Dr. Gindes was performing an evaluation of H.S. and her parents so that a court could better determine a *future course* the family should take as regards T. S.'s visitation rights and the overall mental health needs of the family.

Contrary to the impression left by K.M.'s testimony and Ms. Golden's arguments, Dr. Gindes did not perform therapeutic counseling. Still less can it be said that Dr. Gindes provided mental health counseling for K.M. or H.S. in order to ameliorate the effects of a qualifying crime. It is therefore determined that K.M., on behalf of H.S., has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to compensation for Dr. Gindes's court-ordered services. (Gov. Code, § 13965(a)(1)(A); Reg., § 647.32.)

Order

The request for compensation for Dr. Gindes's court-ordered psychological evaluation is denied.

³⁸ All regulation citations are to California Code of Regulations, title 2.

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Notice of Decision

On October 24, 2003, the California Victim Compensation and Government Claims Board adopted the attached Decision as Precedent Decision Number 03-03.

Date: October 28, 2003

JUDITH A. KOPEC
Supervising Staff Counsel
California Victim Compensation and
Government Claims Board