

Circuit Court for Howard County
Case No. C-13-CV-23-000219

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2335

September Term, 2023

IN THE MATTER OF GARY POLINSKY

Nazarian,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: February 5, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

The Criminal Injuries Compensation Board (“the Board”) appeals a ruling by the Circuit Court for Howard County reversing the Board’s order denying compensation to Gary Polinsky for the value of the skilled nursing services provided by his wife after he was injured during a home invasion and remanding to the Board for further findings. In its timely appeal, the Board asks us to consider the following questions:

1. Did the Board act according to its statutory obligation under Section 11-810(c) of the Criminal Procedure[] Article, and was its decision to reimburse Mr. Polinsky for \$3[,]416.88 in medical expenses based on substantial evidence in the record?
2. Is Mr. Polinsky’s wife entitled to compensation from the Board as the spouse of a crime victim?
3. Was the Board authorized to render a final decision based on the record evidence after providing Mr. Polinsky with a hearing and ample time to respond to its requests for documentation to support his claim?

For the reasons that follow, we conclude that the Board acted in accordance with the statutory mandates of the criminal injury compensation scheme in denying Mr. Polinsky’s claim for reimbursement for his wife’s nursing care. We will therefore reverse the order of the Circuit Court for Howard County and remand to that court with instructions to affirm the decision of the Board.

BACKGROUND

On April 8, 2020, Mr. Polinsky was stabbed approximately eighteen times in a random attack in his garage. After stumbling into his house with life-threatening abdominal, shoulder, lung, and extremity injuries, Mr. Polinsky called to his family. His wife, Patsy Longard Polinsky, a registered nurse, was able to administer first aid until

emergency medical services personnel arrived. Mr. Polinsky was flown to Shock Trauma, where he remained in intensive care for several days.

Upon his release from the hospital, Mr. Polinsky required round-the-clock care for his severe injuries. Ms. Polinsky took mostly unpaid family medical leave from her employment through July 7, 2020, to provide that care, which included her likely life-saving recognition that Mr. Polinsky was suffering from post-operative blood clots that required additional hospitalization.

Mr. Polinsky applied for crime victim compensation under the Criminal Injuries Compensation Act, Md. Code, § 11-801 *et seq.*, of the Criminal Procedure Article (“CP”). The Board considered his claim, and found, in its interim eligibility for award letter, that Mr. Polinsky had incurred unreimbursed medical (pharmaceutical) expenses in the amount of \$126.88. As to Mr. Polinsky’s claim for reimbursement for his wife’s loss of income during the time she cared for him, the Board denied that portion of his claim because no provision of the governing statute permits an award for loss of earnings to a spouse while caring for an injured crime victim.

Mr. Polinsky timely requested and was granted a reconsideration hearing before the Board. In that hearing, he explained that he was not seeking an award for his wife’s loss of income as a nurse but as compensation for her services rendered as a nurse to care for him, which “would definitely have been paid to any nurse similarly qualified who might have been brought in.” The Board, then understanding that Mr. Polinsky was not seeking his wife’s lost wages but rather “payment for a nurse who was Mr. Polinsky’s wife[,]” noted that, “[p]utting the issue aside for now as to whether or not we can compensate for that

charge,” it had not seen an invoice. The Board concluded the hearing by advising Mr. Polinsky to submit an invoice for Ms. Polinsky’s services “for reimbursement from [his] insurance company[,]” as that was information it “would need” in making its determination. Mr. Polinsky agreed to “do exactly what [the Board] said.”

Following the reconsideration hearing, the Board also advised Mr. Polinsky that it would require documentation from his doctor stating that Ms. Polinsky was assigned as a nurse to provide her husband’s care and a statement from Mr. Polinsky’s insurance company that home health-care benefits were not eligible for coverage under his policy. In response, Mr. Polinsky’s doctor submitted a letter stating that Mr. Polinsky’s wife had been his “primary care taker” since his assault, and it was anticipated that she would continue doing so through approximately October 2022. Mr. Polinsky’s insurer submitted a document stating that his policy only covered “services rendered by HMO contracted providers.” Ms. Polinsky was not a contracted health-care provider under the policy.

Ms. Polinsky also provided the Board with a narrative of the services she provided to her husband—including monitoring wound sites, administering medications and hygiene care, and coordinating with his medical team—along with the time she spent on those particular tasks, for a total reimbursement request of \$18,148. Finally, Mr. Polinsky submitted an additional claim for his unreimbursed medical expenses for physical therapy services and follow-up doctors’ visits in the amount of \$2,255.72.

The Board, on February 22, 2023, issued its “Final Decision of Award Letter” awarding Mr. Polinsky \$3,416.88. Objecting to the Board’s denial of compensation for his

wife’s nursing services and arguing it was made in error, Mr. Polinsky, on March 17, 2023, filed a petition for judicial review by the circuit court.

The circuit court heard argument on Mr. Polinsky’s petition on January 4, 2024. Pointing out that Board payments are “really a fund of last resort” that must be protected, the court questioned whether Mr. Polinsky had attempted to obtain in-home nursing services through his insurance company. The court also expressed concern that some of the tasks noted on Ms. Polinsky’s invoice did not entail skilled nursing services but were rather care-taking tasks that would have been undertaken by any spouse of an injured person.

The Board’s attorney indicated that the issue before the court was “whether the expenses related to the nursing care provided by the petitioner’s wife is something that’s compensable under the statute[,]” suggesting the need for documentation to support any “unreimbursed and unreimbursable medical expenses.” Acknowledging receipt of an invoice from Ms. Polinsky, the Board advised the court it had requested “a more detailed bill” to show any “unreimbursed medical expense that would be compensable[,]” but the Polinskys had not provided such an invoice. Therefore, in the Board’s view, the documentation that has been provided “was insufficient to support paying out a claim in excess of what was actually awarded[.]”

In its oral ruling, the circuit court found that “at certain points [Ms. Polinsky] was working as essentially a registered nurse and doing those things that a registered nurse would do. But I don’t believe it was all the time. And therefore, I am going to reverse the [B]oard’s decision and remand it for further findings by the [B]oard.”

In its written order entered January 5, 2024, the circuit court concluded that the Board’s complete denial of reimbursement for Ms. Polinsky’s nursing care “was not supported based on a review of the entire record and in consideration of the Global Covid-19 pandemic that was in effect at the time wife provided skilled nursing services to Petitioner.” It therefore found that a portion of Ms. Polinsky’s services rendered should be subject to reimbursement, but agreed with the Board that the invoices submitted by Ms. Polinsky were “insufficient to determine” which nursing services were required because they were too “general” to separate spousal caregiving tasks from skilled nursing tasks provided by the spouse. The circuit court therefore reversed and remanded to the Board to make further findings regarding Mr. Polinsky’s request for reimbursement for services rendered by his wife.

The Board filed a timely notice of appeal.

DISCUSSION

The Board contends that the circuit court erred in making its own factual findings and substituting its judgment for that of the Board when it reversed the Board’s ruling denying reimbursement for Ms. Polinsky’s nursing services to her husband. In addition, it argues that the court misconstrued the Board’s statutory authority in mandating that Mr. Polinsky be “reimbursed” for expenses he did not incur because he failed first to seek payment from any entity other than the Board, including his health insurer.

Mr. Polinsky responds, perhaps misunderstanding the nuances of the Board’s argument, that the Board’s denial of his claim stemmed from his alleged failure to provide sufficiently itemized time sheets evidencing his wife’s skilled nursing care, even though

his doctor agreed that Ms. Polinsky was the best person to be his primary caretaker, as opposed to an outside nurse even if one could have been retained during the pandemic lockdown period. In his view, no evidence in the record suggested that the nursing care was not needed, provided, or sufficiently documented. For that reason, the Board’s complete denial of compensation for Ms. Polinsky’s skilled nursing services because she was a family member was “arbitrary and capricious” and “wrong as a matter of statutory interpretation[.]”¹

Standard of Review

As the Maryland Supreme Court explained in *Junek v. St. Mary’s County Department of Social Services*, 464 Md. 350, 356-57 (2019):

We review an administrative agency’s decision under the same statutory standards as the circuit court. Therefore, we reevaluate the decision of the agency, not the decision of the lower court. Ordinarily the Court reviewing a final decision of an administrative agency shall determine (1) the legality of the decision and (2) whether there was substantial evidence from the record as a whole to support the decision. Purely legal questions are reviewed *de novo* with considerable weight afforded to an agency’s experience in interpretation of a statute that it administers. Matters of statutory interpretation and application are questions of law, reviewed *de novo*.

(Cleaned up.)

¹ Mr. Polinsky also raises, in a footnote, the question of whether this Court has jurisdiction over the matter, as it is unclear whether the circuit court’s order comprised a final judgment. An order to remand under Md. Code, § 10-222(h) of the State Government Article, which authorizes judicial review of an administrative agency’s decision, is an appealable order. *See Johnson v. Crim. Injs. Comp. Bd.*, 145 Md. App. 96, 105 n.5 (2002). Therefore, the circuit court’s order was appealable, and this Court has jurisdiction to consider this appeal.

Our role in conducting judicial review is “very narrow,” *Motor Vehicle Admin. v. Shepard*, 399 Md. 241, 252 (2007), and “does not involve an independent decision on the evidence.” *Johnson*, 145 Md. App. at 107. Because agency decisions ““are *prima facie* correct and carry with them the presumption of validity,”” we review the agency’s decision in the light most favorable to the agency. *Grasslands Plantation, Inc. v. Frizz-King Enters., LLC*, 410 Md. 191, 204 (2009) (quoting *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998)). Nonetheless, “it is always within our prerogative to determine whether an agency’s conclusions of law are correct[,]” but we will “frequently give weight to an agency’s experience in interpretation of a statute that it administers[.]” *Kushell v. Dep’t of Nat. Res.*, 385 Md. 563, 576 (2005).

Analysis

The General Assembly enacted the Criminal Injuries Compensation Act in 1968 “for the purpose of enabling innocent victims of certain crimes to receive State-funded compensation for physical injury sustained by them as a result of the crime.” *Oper v. Crim. Injs. Comp. Bd.*, 403 Md. 587, 590 (2008) (citing *Crim. Injs. Comp. Bd. v. Remson*, 282 Md. 168, 171 (1978)). See 1968 Md. Laws, ch. 455, § 1. In creating such program, the General Assembly recognized that “[a] need for governmental financial assistance for such victims” was “a matter of moral responsibility[.]” *Crim. Injs. Comp. Bd. v. Gould*, 273 Md. 486, 496 (1975) (cleaned up). The Act is remedial in nature, and “to the extent possible,” must be liberally construed to advance its remedy. *Oper*, 403 Md. at 594.

In permitting crime victims to be compensated by State funds for their unrecoverable personal injury costs and loss of earnings and establishing the Criminal

Injuries Compensation Board, the General Assembly created new obligations for the State that did not exist “at common law or under constitutional law.” *McComas v. Crim. Injs. Comp. Bd.*, 88 Md. App. 143, 147 (1991). Because the Act offers a government financial assistance program in “the nature of welfare benefits[,]” crime victims “do not have a substantive right to the benefits created but only an expectation of receiving those benefits, for it is generally held that welfare benefits laws—although creating an expectation of public benefits—do not confer a contractual right to receive the expected amount.” *Id.* at 147-48 (cleaned up).

CP § 11-810 provides, in pertinent part:

- (a) The Board may make an award only if the Board finds that:
 - (1) a crime or delinquent act was committed; and
 - (2) the crime or delinquent act directly resulted in:
 - (i) physical injury to or death of the victim; or
 - (ii) psychological injury to the victim that necessitated mental health counseling.
- (b) The Board shall accept as evidence:
 - (1) a report produced by a law enforcement agency;
 - (2) medical records documenting an injury consistent with the alleged crime;
 - (3) a sworn statement from a qualified third party;
 - (4) a peace order issued under Title 3, Subtitle 15 of the Courts Article;
 - (5) a protective order issued under Title 4, Subtitle 5 of the Family Law Article; and
 - (6) any other evidence the Board considers probative.
- (c) Unless total dependency is established, family members, household members, and minors living with a legal guardian are considered to be partly

dependent on a parent or a legal guardian with whom they reside without regard to actual earnings.

(d) The Board may make an award only if the claimant, as a result of the injury on which the claim is based, has:

(1) incurred at least \$100 in unreimbursed and unreimbursable expenses or indebtedness reasonably incurred or claimed for:

- (i) medical care, including the cost of medical supplies;
- (ii) expenses for eyeglasses and other corrective lenses;
- (iii) mental health counseling;
- (iv) funeral expenses;
- (v) repairing, replacing, or cleaning property;
- (vi) disability or dependent claim, or any assistive technology related to a disability or dependent claim;
- (vii) the costs of one-time relocation, including any security deposit;
- (viii) child care expenses incurred as a result of seeking medical or psychological care;
- (ix) transportation costs incurred by travel to seek medical or psychological care; or
- (x) other necessary services; or

(2) lost at least \$100 in earnings or support.

The burden is on the claimant to prove his entitlement to compensation from the Board. *See* COMAR 12.01.01.08C(2) (providing that a claimant has the burden of proof at a hearing before the Board). Furthermore, if the claimant does not “provide information requested by the Board, the Board may deny the claim.” COMAR 12.01.01.04B(2).

Despite some clouding of the issues in the parties’ briefs and at oral argument relating to the sufficiency of the invoices submitted to the Board by Ms. Polinsky and the existence, or lack thereof, of a monetary obligation incurred by Mr. Polinsky, the issue before us is simply one of law and statutory construction.

In construing a statute, “we search for legislative intent[,]” and, in doing so, “[c]onsideration of the statutory text in context is our primary guide.” *Bell v. Chance*, 460 Md. 28, 53 (2018). “Text is the plain language of the relevant provision, typically given its ordinary meaning, viewed in context, considered in light of the whole statute, and generally evaluated for ambiguity.” *Blue v. Prince George’s Cnty.*, 434 Md. 681, 689 (2013) (quoting *Town of Oxford v. Koste*, 204 Md. App. 578, 585-86 (2012)). When the words of the statute are clear and unambiguous, there usually is no need to go further in construing it. *Comptroller of Treasury v. Phillips*, 384 Md. 583, 591 (2005).

The Criminal Injuries Compensation Act is a remedial law providing support to crime victims, which we would construe in favor of the claimant if its language is “ambiguous.” *Opert*, 403 Md. at 602. Here, however, the unambiguous plain language of CP § 11-810(d)(1) permits the Board to award a crime victim for “*unreimbursed and unreimbursable* expenses or indebtedness reasonably incurred” for medical care of at least \$100. (Emphasis added.) The ordinary meaning of this language is that any payment for medical care must be unreimbursed to the crime victim and unreimbursable to him by another source. It is in this clear language that Mr. Polinsky’s claim for reimbursement of the value of his wife’s nursing care must fail because Mr. Polinsky did not meet his burden of proving that this medical care was unreimbursable by another source, here his health insurer.

During his reconsideration hearing, a Board member questioned Mr. Polinsky: “If your spouse hadn’t been a nurse, what would’ve happened at that point? How would you have proceeded once you left the hospital?” Mr. Polinsky responded, “I guess they

would've had to have some kind of home nurse come take care of me. I sure couldn't have taken care of myself. I don't think any of the children would've or are capable of that kind of care, either." Mr. Polinsky acknowledged to the Board that he had not submitted an insurance claim for his wife's care of him, stating that "[w]e didn't ask for a home nurse because she was there and my doctor thought she was the best person to be taking care of me at the time[,] and he didn't "know how you put a claim for that." The Board reminded Mr. Polinsky that it was "the payer of last resort" and advised that it would consider an invoice for Ms. Polinsky's nursing services if submitted, "but our response might very well be that the claimant needs to seek reimbursement from the insurance company first." Even a denial of the claim "would assist the [Board] in making their determination."

At the judicial review hearing before the circuit court, Mr. Polinsky's attorney acknowledged that his client had not inquired whether his insurer would cover the cost of any home nursing care, much less that of his wife who was admittedly not on the insurer's HMO-approved list, because "who's to say whether the HMO would have provided a nurse in 2020 when we were in lockdown." The court responded,

We don't know whether they would or would not have or [sic] because in 2020 had they been asked, would they have approved, instead of trying to find individual care that a policy would have allowed? Would they have paid for the RN who was within the home to do specific things? I don't know because it wasn't asked.

Choosing to have his wife, a qualified nurse, care for him during the early days of the COVID-19 pandemic lockdown was arguably a reasonable decision. Prior to doing so, however, Mr. Polinsky neither asked his insurer to provide a nurse who would be covered by his policy, nor did he seek coverage for his wife's care as a non-HMO provider. As a

result, he was unable to establish satisfactorily to the Board either that he incurred an actual expense or a reasonable indebtedness for his wife’s services or that the cost of his nursing care was unreimbursable. Therefore, under CP § 11-810(d)(1), the Board, as the payer of last resort, was not permitted to make an award under those circumstances until other sources of payment have been exhausted.

In sum, we hold that the circuit court erred in substituting its judgment for that of the Board and in reversing the Board’s denial of Mr. Polinsky’s claim for reimbursement for a portion of his wife’s nursing services. We therefore reverse the order of the circuit court and remand to that court for further proceedings in accordance with this opinion.²

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY REVERSED;
CASE REMANDED TO THAT COURT
WITH DIRECTIONS TO AFFIRM THE
DECISION OF THE CRIMINAL INJURIES
COMPENSATION BOARD. COSTS TO BE
PAID BY APPELLEE.**

² Mr. Polinsky also avers that the Board’s denial without explanation of the entire nursing care claim violated the Maryland Declaration of Rights, which requires that a crime victim be “treated by agents of the State with dignity, respect, and sensitivity during all phases of the criminal justice process[,]” and the legislative policy espoused in CP §§ 11-802 and 11-1002 that the State bears a moral responsibility to “help, care, and support” crime victims.

Maryland Rule 8-131(a) provides that, ordinarily, an appellate court will not decide any issue, other than ones pertaining to subject matter and personal jurisdiction, “unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Mr. Polinsky did not argue this policy contention before either the Board or the circuit court, and therefore, neither the Board nor the circuit court had the opportunity to rule on it. Accordingly, it is not preserved for our review. *See Thana v. Bd. of License Comm’rs for Charles Cnty.*, 226 Md. App. 555, 576 (2016).