

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F210913**

**BARBARA CRAYS, MOTHER  
BRANDON CRAYS (DECEASED)**

**CLAIMANT  
EMPLOYEE**

**MILLER SPECTACULAR SHOWS, INC.**

**RESPONDENT EMPLOYER**

**EQUITY MUTUAL**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED JANUARY 26, 2005**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE TERENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

Respondents represented by the HONORABLE MICHAEL R. MAYTON, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas on December 7, 2004. A prehearing conference was held on June 16, 2004 and a prehearing order was filed the same date. A copy of the prehearing order was introduced as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable injury on September 15, 2002.
2. The average weekly wage for the claimant is \$225.

The claimant contends that Brandon Crays sustained a compensable fatal injury on September 15, 2002 and his average weekly wage was \$225. The claimant, the

mother of the deceased, contends that she was dependent on him at the time of his death and is entitled to the statutory death benefits and an attorney's fee.

Respondents contend that the mother of the deceased is not entitled to any benefits and cannot prove dependency. Respondents accepted the claim as compensable and paid funeral expenses and all other expenses that were due.

### **ISSUES TO BE LITIGATED**

1. Dependency benefits.
2. Attorney's fees.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. There was a compensable injury on September 15, 2002.
2. The average weekly wage for the claimant is \$225.
3. The claimant has failed to prove by a preponderance of the evidence that she was "wholly and actually dependent" or "partially dependent" on the deceased employee.

## DISCUSSION

The claimant, Barbara Crays, mother of the deceased employee of Miller Spectacular Shows, testified that her son was 25 years old at the time of his death. The claimant's son traveled with the carnival or amusement show. Ms. Crays stated that at the time of her son's death she was drawing between \$400 and \$500 from SSI and now draws \$534. Ms. Crays indicated that any additional money she received was from her son or other family. Ms. Crays provided a listing of her expenses before her son's death and these include: \$150 for rent; \$150 for car payment; \$200 for groceries; \$50 for medicine; \$100 for car gasoline; \$48 for car insurance; \$65 for telephone; \$80 for television and cable; and \$75 to \$100 for necessities. Ms. Crays testified that her son lived with her what time he was not traveling with his job. Ms. Crays further testified that her son gave her \$350 to \$400 per month in cash as her son did not have a bank account.

Ms. Crays stated that she saw the claimant almost every month and that he gave her cash then or sometimes mailed her cash. Ms. Crays stated that her family helps her more now since her son died. Ms. Crays testified that her son sometimes paid the rent to her landlord, Mr. Rogers. Ms. Crays also confirmed that the claimant's work was seasonal work from March to September and that her son did not get a regular job in his off work period but only did spot work. Ms. Crays testified that from October through February, her son was only able to give her about \$100 per month.

Carl Rogers, a friend of Ms. Crays and former landlord, testified that he has actually seen the claimant's son give Ms. Crays money and he has received money through the mail to pay the rent from the claimant's son. Mr. Rogers has seen the

claimant's son pay for groceries Ms. Crays was buying. Mr. Rogers did not know any specific amounts of cash Brandon might have given his mother.

Ms. Crays, the mother of the deceased employee, contends that she is entitled to the statutory percentage of 25% of her son's average weekly wage. She contends she was dependent on her son for regular monetary contributions to her support.

Ark. Code Ann. §11-9-527 (Supp. 2003) provides that persons claiming compensation for the death of an employee must show that they were "wholly and actually dependent" on the deceased employee. See, *Roach Mfg. Co. v. Cole*, 265 Ark. 908, 582 S.W.2d 268 (1979). A person may be wholly dependent where the existence of an obligation of support sufficient to give a reasonable expectation of support is shown. *Id.*, 265 Ark. 908. However, "actual dependence" requires proof of some measure of actual support or a reasonable expectation of support. *Robinson v. Ed. Williams Const. Co.*, 38 Ark. App. 90, 828 S.W.2d 860 (1992).

If the employee leaves dependents who are only partially dependent on his earnings for support, the compensation payable for partial dependency must be the proportion that the partial dependency bears to total dependency. Ark. Code Ann. §11-9-527(h)(i) (Supp. 2003). All questions of dependency are determined as of the time of the injury. Ark. Code Ann. §11-9-527 (h) (Supp. 2003). Dependency is a fact question to be determined in light of the surrounding circumstances. *Cole, supra; Robinson, supra.*

In the present case, the claimant testified that the decedent traveled with his job from March through September but returned home to stay with her whenever possible

and stayed with her when his job was off season, October through February. The claimant, mother of the deceased, was 51 but did not work and received \$534 monthly from SSI benefits and supplemented her income by money she received from family and friends. The claimant testified that her son, the deceased, gave her about \$400 monthly while he was traveling and then gave her about \$100 monthly during his off season. She stated that the money was always in cash and she used this to help pay rent and her other monthly expenses. Neither the claimant nor the deceased had a bank account. One witness, Carl Rogers, testified that he actually saw the claimant's son give her cash and he was aware the son had mailed his mother cash but he did not know what amount.

After considering the testimony and the lack of any type documentation of monetary transactions, I am constrained to find the claimant has failed to prove by a preponderance of the evidence that she was "wholly and actually dependent" or "partially dependent" on the deceased employee. While the claimant has testified that she received cash on a regular basis from her son, there was no supporting documentation to account for any particular amounts or regularity.

### **ORDER**

The claimant has failed to prove by a preponderance of the evidence that she was "wholly and actually dependent" or "partially dependent" on the deceased employee. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**