Circuit Court for Baltimore City
Case No. 24-C-18-006701

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 817

September Term, 2019

JACQUETTA N. DIXON

v.

CRIMINAL INJURIES COMPENSATION BOARD

Fader, C.J.,
Arthur,
Gould,

JJ.

Opinion by Arthur, J.

Filed: July 16, 2020

Jacquetta N. Dixon applied for compensation under the Criminal Injuries Compensation Act after the father of her four children, Shawn L. Reid, was murdered. The Criminal Injuries Compensation Board reimbursed Ms. Dixon for funeral expenses, but denied her claim for compensation for loss of support because her children were awarded Social Security survivors benefits that exceeded the maximum award that the Board could provide.

Ms. Dixon filed a petition for judicial review in the Circuit Court for Baltimore City, which affirmed the Board's decision. Ms. Dixon appealed the circuit court's decision. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Shawn L. Reid was fatally shot in Baltimore on November 15, 2016. His four minor children and their mother, Jacquetta N. Dixon, survived him.

On November 23, 2016, Ms. Dixon, as the children's mother and surviving parental guardian, applied for an award under the Criminal Injuries Compensation Act (the "Act"), Md. Code (2001, 2008 Repl. Vol.), §§ 11-801 to 11-819 of the Criminal Procedure Article ("CP"). She sought $4,160 for Mr. Reid's funeral expenses and $20,000 in compensation for the loss of support of the children.

On March 14, 2017, the Social Security Administration awarded the children survivors benefits because of their father's death. For each child, Ms. Dixon, as the representative payee, received a $51 payment for Mr. Reid's death; a $1,074 payment for the period between the date of his death and the award; and starting in April 2017, monthly payments of $256 until each child reaches the age of majority.

In a decision issued on October 24, 2018, the Board determined that Ms. Dixon was eligible for compensation[1] and awarded $4,160 for the funeral expenses. The Board determined, however, that it could not compensate Ms. Dixon and the children for loss of support. The Board explained that the "Social Security benefits to be received on behalf of the children during the period of their minority will exceed" $25,000, the maximum amount payable by the Board for a dependency-related claim under the Act. CP § 11-811(b)(1)(i). Because an award for a dependency-related claim generally must "be reduced by the amount of any payments received or to be received as a result of the injury . . . from any other public or private source" (CP § 11-811(c)(2)), the Board concluded that Ms. Dixon and her children were not entitled to compensation for loss of support.

The designee for the Executive Director for the Governor's Office of Crime Control and Prevention affirmed the Board's decision on November 9, 2018.[2]

[1] A person is eligible for an award under the Act if: (1) the crime caused physical injury or death to the victim or resulted in psychological injury that required mental health counseling, (2) the crime was reported to proper authorities within 48 hours of its occurrence, (3) the victim fully cooperated with law enforcement officers, and (4) the victim incurred at least $100 in unreimbursable expenses or lost earnings or support as a result of the injury. CP § 11-810(a), (c). A parent, guardian, child, or spouse of a victim who resided with the victim is eligible for an award. CP § 11-808(a)(1)(iv). The Board does not dispute that Ms. Dixon was eligible for an award.

[2] Within 90 days of receiving the claim, the Board must evaluate the claim and provide the Executive Director for the Governor's Office of Crime Control and Prevention with a report of its decision and reasoning. CP § 11-814(b). The Executive Director must modify, affirm, or reverse the decision within 30 days of receipt. CP § 11-814 (c). The Executive Director may designate a person to carry out those duties. CP § 11-803.

On December 13, 2018, Ms. Dixon filed for judicial review of the Board's decision in the Circuit Court for Baltimore City. The circuit court held a hearing on the appeal and affirmed the Board's decision on May 21, 2019. Ms. Dixon noted her timely appeal to this Court thereafter.

QUESTIONS PRESENTED

Ms. Dixon presents the following question for our review: Whether, as a matter of law, the Maryland Criminal Injuries Compensation Board erred in entirely denying monetary support for a homicide victim's minor children because of Social Security benefits that will be received by his children?

For the reasons discussed herein, we answer in the negative.

STANDARD OF REVIEW

"An appellate court, '[w]hen reviewing the decision of an administrative agency . . . review[s] the agency's decision directly, not the decision of the circuit court.'" *Marks v. Criminal Injuries Comp. Bd.*, 196 Md. App. 37, 55 (2010) (quoting *Comptroller of the Treasury v. Science Applications Int'l Corp.*, 405 Md. 185, 192 (2008)).

The sole question in this case is whether the Board correctly interpreted the Act. Consequently, our review is limited to "'determin[ing] if the administrative decision is premised upon an erroneous conclusion of law.'" *Johnson v. Criminal Injuries Comp. Bd.*, 145 Md. App. 96, 106 (2002) (quoting *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569, 577 (1994)). "'A reviewing court is under no constraints in reversing an

administrative decision that is premised solely upon an erroneous conclusion of law.'" *Id.* at 107 (quoting *Prince George's County v. Brown*, 334 Md. 650, 658 (1994)).

"'While we frequently give weight to an agency's experience in interpretation of a statute that it administers, it is always within our prerogative to determine whether an agency's conclusions of law are correct.'" *Marks v. Criminal Injuries Comp. Bd.*, 196 Md. App. at 57 (quoting *Kushell v. Dept. of Nat. Resources*, 385 Md. 563, 576 (2005)).

DISCUSSION

Ms. Dixon presents two separate arguments for reversing the Board's decision. First, she claims that the Board incorrectly interpreted the statute that requires it to reduce an award under the Criminal Injuries Compensation Act in certain circumstances. Second, she argues that the Board's decision is contrary to Maryland's statutory policies and denies her and her children equal protection under the law. We shall address each argument in turn.

A. The Board's Interpretation of Section 11-811

Ms. Dixon contends that the Board wrongly denied her claim for loss of support because it incorrectly interpreted a provision of the Act. The pertinent provision of the Act provides:

> (c) An award made under this subtitle *shall be reduced* by the amount of any payments received or to be received as a result of the injury:
>
> (1) from or on behalf of the offender;
>
> (2) except as provided in item (3) of this subsection, *from any other public or private source*, including an award of the State Workers' Compensation Commission under the Maryland Workers' Compensation Act;

(3) from any proceeds of life insurance in excess of $25,000; or

(4) as an emergency award under § 11-813 of this subtitle.

CP § 11-811(c) (emphasis added).

Interpreting section 11-811(c)(2), the Board reasoned that any award must be reduced by the amount of the payments that the children have received and will receive from the Social Security Administration (a public source). Because those payments will exceed the maximum amount of compensation that Ms. Dixon and her children could receive under the Act ($25,000), the Board concluded that they were entitled to no additional compensation.

Although section 11-811(c)(2) requires an award to be reduced by payments "from *any* other public or private source," Ms. Dixon argues that the payments should be reduced only by payments that are specifically designed to compensate crime victims, and not benefits that are payable regardless of the deceased's cause of death. She claims that the purpose of a loss-of-support award is to provide immediate lump-sum compensation to crime victims and their dependents to cover immediate expenses such as funerals, health care, and transportation. She distinguishes those benefits from Social Security benefits, which provide long-term support for children of the deceased, regardless of how the death occurred.

"When we construe a statute, we search for legislative intent." *Bell v. Chance*, 460 Md. 28, 53 (2018). "Consideration of the statutory text in context is our primary guide." *Id.* "'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 County*, 434 Md. 681, 689 (2013) (quoting *Town of Oxford v. Koste*, 204 Md. App. 578, 585-86 (2012), *aff'd*, 431 Md. 14 (2013)) (further citations omitted). Where the words of the statute are clear and unambiguous, there usually is no need to go further in construing it. *See, e.g., Harris v. State*, 331 Md. 137, 145-46 (1993). Because the Act is a remedial law that provides support to crime victims "'as a matter of moral responsibility,'" courts construe the law in favor of the claimant if it presents "ambiguous language." *Opert v. Criminal Injuries Comp. Bd.*, 403 Md. 587, 602 (2008) (quoting CP § 11-802).

The plain meaning of CP section 11-811(c) unambiguously expresses the General Assembly's intention that payments such as Social Security benefits shall reduce an award given under the Act. CP section 11-811(c) begins by stating that an award "shall be reduced by the amount of any payments received or to be received" by the victims or their families "as a result of the injury." This language imposes no limitation or qualification on the types of payments that will reduce an award, other than that they be "as a result of the injury" that entitles the claimant to an award. The ordinary meaning of this language is that any payment of any sort made as a result of the victim's injury shall reduce the Board's award. Social Security benefits, if received "as a result of the injury" suffered when a person is a victim of a crime, fall squarely within the class of payments that require an award under the Act to be reduced.

The statute's ordinary meaning does not suggest, as Ms. Dixon argues, that an award shall be reduced only by payments that are given specifically to victims of crimes. To reach her conclusion, Ms. Dixon must reinterpret the actual statutory language ("as a

result of the injury") to mean "exclusively as a result of a criminal injury" or perhaps "exclusively as a result of an injury inflicted by criminal conduct." To agree with Ms. Dixon's argument would be to insert language that does not appear in the statute, which we cannot do. *BAA, PLC v. Acacia Mut. Life Ins. Co.*, 400 Md. 136, 152 (2007). The legislature could have limited the scope of CP § 11-811(c) to awards payable as a result of a criminal injury, "but it chose not to do so." *Leppo v. State Highway Admin.*, 330 Md. 416, 423 (1993).[3]

The breadth of section 11-811(c) is further demonstrated by the language requiring that an award be reduced by "any payments received or to be received as a result of the injury. . . from any other public or private source." CP § 11-811(c)(2). The plain meaning of this provision is that "any" payment that the victim or the victim's family receives as a result of the injury, regardless of its nature or source, would reduce an award under the Act. Because Social Security benefits are payments from a public source, they plainly are the type of payments that will reduce an award under the Act.

Ms. Dixon argues that the ensuing language, "*including* an award of the State Workers' Compensation Commission under the Maryland Workers' Compensation Act,"

[3] It is hard to square Ms. Dixon's position with section 11-811(c)(3), which requires that an award be reduced by the proceeds of life insurance in excess of $25,000. Life insurance, like Social Security survivors benefits, is typically payable upon the insured's death by any cause, except for war, military action, air travel, injury suffered in certain hazardous occupations, and (in some instances) suicide. *See* Maryland Code (1996, 2017 Repl. Vol.), § 16-215 of the Insurance Article. Had the General Assembly intended for an award to be reduced only by benefits that are payable as the specific result of an injury inflicted by criminal conduct, it would not have included life insurance among the sources of benefits that can reduce an award.

somehow limits the scope of applicable payments to those that are specifically given to those who have suffered injuries as a result of a crime. CP § 11-811(c)(2) (emphasis added). She seems to draw a distinction between Social Security benefits, which are paid incrementally over a long term, and workers' compensation benefits, which she says are paid in an "immediate lump sum."[4] Proceeding from that alleged distinction, she argues that the phrase "*including* an award of the State Workers' Compensation Commission under the Maryland Workers' Compensation Act" means that an award must be reduced by lump-sum payments from a "public or private source," not payments that are made incrementally, over time.

"Ordinarily," however, "the word 'including' means comprising by illustration and not by way of limitation." *Group Health Ass'n v. Blumenthal*, 295 Md. 104, 111 (1983); *see* Md. Code (2014), § 1-110 of the General Provisions Article; *see also Include*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("[t]he participle *including* typically

[4] Despite Ms. Dixon's contention, Maryland's workers' compensation statutes favor periodic payments over lump sum payments, to the extent that lump sum payments are an exception and not a routine payment option. "'The general theory underlying the work[ers'] compensation statutes is to provide for periodic payments, as a substitution for the regular income theretofore earned.'" *C & R Contractors v. Wagner*, 93 Md. App. 801, 820 (1992) (quoting *Valles v. Daniels Constr. Co.*, 589 S.W.2d 911, 912 (Tenn. 1979)). "[L]ump-sum awards are exceptions to the general 'scheme' and should only be cautiously considered." *Id.* (citing *Valles v. Daniels Constr. Co.*, 589 S.W.2d at 912). The Workers' Compensation Commission may award a lump sum payment only if it "is warranted under the facts and circumstances of a claim." Md. Code (1991, 2016 Repl. Vol.), § 9-729(b) of the Labor and Employment Article. The circumstances that warrant a lump-sum payment must be "[]related to the necessary living or business needs of the claimant." *University of Maryland Med. Sys. Corp. v. Erie Ins. Exch.*, 89 Md. App. 204, 215-16 (1991) (holding that payment of debts for previous medical treatments were "not necessary for the injured worker's survival or well-being").

indicates a partial list[]"). Thus, by *including* a reference to workers' compensation awards in CP section 11-811(c), the General Assembly was giving an example of the type of payment that would reduce the award; it was not limiting the class of payments that would reduce the award or suggesting that only lump-sum payments would reduce an award.[5]

Ms. Dixon goes on to argue that *ejusdem generis*, a canon of statutory construction,[6] supports her conclusion that CP § 11-811(c)(2) requires an award to be reduced only by lump-sum payments, and not by payments that are made incrementally, over time, like Social Security benefits. She is incorrect.

Under *ejusdem generis*, "when general words in a statute follow the designation of particular things or classes of subjects or persons, the general words will usually be construed to include only those things or persons of the same class or general nature as those specifically mentioned." *Giant of Md., Inc. v. State's Attorney for Prince George's Cty.*, 274 Md. 158, 167 (1975). The rule is based on the premise "that if the legislature had intended the general words to be considered in an unrestricted sense[,] it would not have enumerated the particular things." *State v. Sinclair*, 274 Md. 646, 658 (1975). The

[5] It is hard for us to grasp how section 11-811(c)(2) would apply only to lump-sum payments, given that the statute specifically applies to "any payments received *or to be received*." The phrase "to be received" obviously encompasses payments that are "to be received" as part of a stream of future income, such as Social Security benefits.

[6] "Canons of construction," like *ejusdem generis*, "are 'no more than rules of thumb that help courts determine the meaning of legislation[.]'" *Neal v. Criminal Injuries Comp. Bd.*, 191 Md. App. 664, 669 (2010) (quoting *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992)).

rule often applies "to statutes featuring lists of specific 'things.'" *Insurance Comm'r v. CareFirst of Maryland, Inc.*, 149 Md. App. 446, 466-67 (2003).

> Courts employ *ejusdem generis* when:
>
> (1) the statute contains an enumeration by specific words; (2) the members of the enumeration suggest a class; (3) the class is not exhausted by the enumeration; (4) a general reference supplementing the enumeration, usually following it; and (5) there is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires.

Tribbitt v. State, 403 Md. 638, 657 (2008) (quoting *In re Wallace W.*, 333 Md. 186, 190 (1993)).

The canon, however, applies only when a general word or phrase follows a list of specific words in a statute. *Id.* at 656. For example, in a statute penalizing anyone "who makes a false statement, report, or complaint" to law enforcement "with intent to cause an investigation or other action to be taken as a result thereof," the phrase "or other action" meant an action "of the same general nature as the initiation of an investigation," and did not include giving a false response to a question from a police officer after an investigation had already begun. *See Choi v. State*, 316 Md. 529, 547-48 (1989); *see also Ejusdem generis*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("[T]he phrase *horses, cattle, sheep, pigs, goats, or any other farm animals*, the general language *or any other farm animals* — despite its seeming breadth — would probably be held to include only four-legged, hoofed mammals typically found on farms, and thus would exclude chickens[]") (emphasis in original). Conversely, the rule did not apply to a statute where a general term preceded a specific list of items, thereby indicating "that the Legislature intended the list of items in [the statute] to be illustrative." *Tribbitt v. State*, 403 Md. at

657 n.14 (refusing to apply the doctrine to a statute defining "sexual abuse" that gave a definition of the term that was followed by a subsection stating that the term "includes: 1. incest; 2. rape; 3. sexual offense in any degree; 4. sodomy; and 5. unnatural or perverted sexual practices").

In this case, the pertinent language is as follows: "An award made under this subtitle shall be reduced by the amount of any payments received or to be received as a result of the injury . . . from any other public or private source, including an award of the State Workers' Compensation Commission under the Maryland Workers' Compensation Act[.]" CP § 11-811(c)(2). The subsection begins with a general phrase ("any other public or private source"), which is followed by one specific example ("including an award of the State Workers' Compensation Commission"). The subsection does not feature a list of specific things followed by a general word or phrase. Therefore *ejusdem generis* does not apply to section 11-811(c)(2).

Finally, Ms. Dixon relies on *Standing v. Department of Labor & Industries*, 92 Wash.2d 463 (1979), which concerns Washington's statutory regime for compensating crime victims. Under the Washington statute that was in effect at the time of the *Standing* decision, a crime victim's benefits were required to "be reduced by the amount of any other public or private insurance, industrial insurance, or medical health or disability benefits available." *Id.* at 465-66 (quoting former Wash. Rev. Code § 7.68.130). In *Standing* the Washington court had to decide whether Social Security old age and survivor death ("OASI") benefits qualified as "public . . . insurance." *Id.* at 471-72.

After examining the attributes of OASI benefits, the court concluded that they resembled insurance in some respects, but resembled social welfare payments in others. *See id*. at 472.[7] In view of the ambiguity about whether OASI benefits were public insurance or welfare benefits, "the lack of either statutory guidelines or legislative history to aid in [its] interpretation," and the large number of people who are potential recipients of Social Security benefits, the Washington court construed its statute to exclude OASI benefits from the class of "public . . . insurance" payments that would reduce an award to a crime victim. *See id*. at 473-74.

[7] The court reasoned as follows:

> Whether OASI payments can accurately be characterized as insurance is a complicated question. Certainly OASI manifests many of the traditional characteristics of insurance, including a broad pooling mechanism and protection against long-range risks. However, OASI differs considerably from insurance in a number of fundamental ways. First, participation in the program is compulsory. Second, the rights created through participation are statutory rather than contractual and employees have no vested interest in OASI funds in the usual sense. In fact, the statutory benefits can be changed. Third, the actuarial relationship between the contributions required and the benefits paid is inherently imprecise and fluctuating. Fourth, certain groups are heavily subsidized and thus there is a decided welfare element involved. Considered in light of these characteristics, OASI is more appropriately viewed as a broad income maintenance system, that is, it is more akin to a general welfare program than to insurance.

Id. at 472 (citations omitted).

In addition, the court recognized that "'the noncontractual interest of an employee covered by the [Social Security] Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payments.'" *Id.* at 473 (quoting *Fleming v. Nestor*, 363 U.S. 603, 609-10 (1960)).

This case does not pose the same interpretive problems that the Washington court faced in *Standing*. *See Williams v. Criminal Injuries Comp. Bd.*, 307 Md. 606, 617 (1986) (observing that "[t]he criminal victim compensation statutes in other jurisdictions . . . have widely varying coverage and eligibility provisions and are, therefore, of little utility in interpreting the Maryland Act[]"). In this case, we are not required to decide whether Social Security benefits are "public insurance," because CP section 11-811(c)(2) does not use that term. CP section 11-811(c)(2) generally requires an award to be reduced by "any payments received or to be received as a result of the injury . . . from any other public or private source," regardless of whether the payments can or cannot be characterized as "insurance." Because the children's Social Security benefits unquestionably are payments from a public source, the Board correctly concluded that Ms. Dixon's award had to be reduced by the amount of Social Security benefits that the children had received or would receive.[8]

[8] Ms. Dixon cites a number of other out-of-state cases that have little bearing on our analysis. In *Jarosz v. Detroit Automobile Inter-Insurance Exchange*, 345 N.W.2d 563, 565 (Mich. 1984), the court held that, under Michigan's system of no-fault automobile insurance, an insurer could not reduce the payments that were due under an insurance policy to the extent that the insured was receiving Social Security benefits. In *Sasso v. Ram Prop. Mgmt*., 431 So.2d 204, 219 (Fla. Dist. Ct. App. 1983), the court upheld the constitutionality of a statute under which certain workers' compensation benefits would come to an end when a person turned 65 and became eligible to receive Social Security benefits. These cases shed no light on whether Social Security benefits are "payments received or to be received as a result of the injury . . . from any other public or private source," within the meaning of CP § 11-811(c).

B. Ms. Dixon's Constitutional Claims

In the latter part of her brief, Ms. Dixon argues that the Board's interpretation of the statute violates the Maryland Declaration of Rights and the United States Constitution and is contrary to Maryland public policy. Ms. Dixon contends that the Board's application of section 11-811 raises equal protection concerns because, she says, it unfairly discriminates against crime victims who receive Social Security benefits. Ms. Dixon also contends that the Board's interpretation of the statute runs against Maryland's public policy of encouraging the purchase of insurance and of treating the children of crime victims and their families with a heightened standard of consideration and protection.

Maryland Rule 8-131(a) provides that, "[o]rdinarily," 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." This rule has "a salutary purpose of preventing unfairness and requiring that all issues be raised in and decided by the trial court." *Conyers v. State*, 354 Md. 132, 150 (1999). Ms. Dixon never argued any of her constitutional and policy contentions before the Board or the circuit court, and therefore, neither the Board nor the circuit court ever had the opportunity to rule on them. Accordingly, they are not preserved for review. *See Thana v. Board of License Comm'rs for Charles Cty.*, 226 Md. App. 555, 576 (2016); *Yim, LLC v. Tuzeer*, 211 Md. App. 1, 49 (2013).

Ms. Dixon argues that because Maryland Rule 8-131(a) permits reviewing courts to "decide such an [unpreserved] issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal," this Court may still consider the issues to prevent the Board from allegedly misapplying section 11-811 and denying rightful compensation to crime victims. She cites *Breeding v. Koste*, 443 Md. 15, 35 n.8 (2015), in which the Court considered an unpreserved argument because of "the relatedness of the argument made before the circuit court and the novelty of the issue presented, in the absence of unfair prejudice to either party, and to promote the orderly administration of justice."

It is a basic principle of judicial process that courts should avoid deciding constitutional questions unless it is necessary for them to do so. It is not necessary for us to decide the unpreserved constitutional questions that Ms. Dixon raised. To the extent that Ms. Dixon's unpreserved policy arguments are analytically separate from her unpreserved constitutional arguments, it will suffice to say that the policy arguments are rebutted by the unambiguous language of the statute.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.