

Circuit Court for Howard County
No. C-13-CV-22-000856

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 947

September Term, 2023

IN THE MATTER OF ASHLEY RILEY, ET AL.

Wells, C.J.,
Arthur,
Ripken,

JJ.

Opinion by Arthur, J.

Filed: March 19, 2024

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

This case involves a challenge to an award of compensation by the Criminal Injuries Compensation Board, an administrative agency. Because the issues on appeal were not presented to the agency itself, they are not preserved for appellate review.

Factual and Procedural Background

On March 10, 2020, Kye Snell was the victim of a fatal shooting. Mr. Snell was the father of appellant Ashley Riley’s two minor children.

Ms. Riley filed a claim with the Maryland Criminal Injuries Compensation Board, “a remedial body designed to provide aid and assistance to victims of crime in Maryland.” Governor’s Office of Crime Prevention, Youth, and Victim Services, *Criminal Injuries Compensation Board*, <https://goccp.maryland.gov/victim-services/cicb/> (archived at <https://perma.cc/4ECR-PJQ4>). She sought unreimbursed counseling expenses and compensation for the loss of the support that she and the children would have received from the decedent.

In an amended decision dated April 21, 2021, the Board concluded that Ms. Riley was eligible for compensation for the unreimbursed counseling expenses, but was ineligible for an award of loss of support. In support of the conclusion that Ms. Riley herself was ineligible for an award of loss of support, the Board found that she had not provided evidence that she was dependent on the decedent for principal support. In support of the conclusion that the children were ineligible for an award of loss of support, the Board relied on Md. Code (2001, 2018 Repl. Vol.), § 11-811(c) of the Criminal Procedure Article (“CP”), which states that an award “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[.]” Because the children would receive more than the statutory cap of \$25,000.00¹ from Social Security, the Board concluded that they were ineligible for an award.

On May 6, 2021, Ms. Riley sent an email asking the Board to reconsider its decision. In that email, she did not argue that the Board erred in reducing the children’s award by the amount of Social Security benefits that they would receive. Nor did she argue that it would be unconstitutional for the Board to reduce the children’s award by the amount of Social Security benefits that they would receive. Instead, she wrote that the amount of the Social Security award was incorrect and was based on old documentation.

On March 16, 2022, the Board conducted a hearing on the request for reconsideration. At the hearing, Ms. Riley was represented by counsel from the Maryland Crime Victims’ Resource Center, Inc. Ms. Riley testified at the hearing about the children’s Social Security benefits, but her counsel did not argue that the Board had erred in reducing the children’s award by the amount of Social Security benefits that they would receive. Nor did counsel argue that it would be unconstitutional for the Board to reduce the children’s award by the amount of Social Security benefits that they would receive. Instead, counsel stressed that the Social Security benefits were for the children, but that Ms. Riley was “seeking the loss of support for herself.”

¹ CP § 11-811(b)(1)(ii).

On August 29, 2022, the Board issued a post-reconsideration denial of Ms. Riley’s claim. In that document, the Board reiterated that Ms. Riley was eligible to be compensated for unreimbursed counseling expenses, but that she was not eligible for an award of support. As before, the Board found that the compensation that the children would receive from Social Security exceeded the maximum amount payable.

With the assistance of counsel, Ms. Riley petitioned for judicial review in the Circuit Court for Howard County. There, she argued, for the first time, that the Board had misinterpreted the governing law in reducing the children’s award by the amount of Social Security benefits that they would receive and that it would be unconstitutional to reduce the children’s award by the amount of Social Security benefits that they would receive. The circuit court affirmed the Board’s decision.

Ms. Riley noted a timely appeal.

QUESTION PRESENTED

Ms. Riley poses the following question: “Whether, as a matter of law, the Maryland Criminal Injuries Compensation Board erred in denying a final support award to a homicide victim’s minor children because these children will receive other previously paid-for non-crime related Social Security Survivor benefits?”

We do not reach that question, because Ms. Riley failed to raise it before the Board and thus failed to preserve it for appellate review.

ANALYSIS

In reviewing the final decision of an administrative agency, this Court “looks through” the circuit court’s decision and “evaluates the decision of the agency.” *People’s*

Counsel for Baltimore Cty. v. Surina, 400 Md. 662, 681 (2007); see *Board of Trs. for Fire & Police Emps.’ Ret. Sys. v. Mitchell*, 145 Md. App. 1, 8 (2002) (stating that “our role” in reviewing an administrative decision “is precisely the same as that of the circuit court”). In other words, this Court reviews the decision of the agency itself, and not the decision of the circuit court. *Mitchell v. Maryland Motor Vehicle Admin.*, 225 Md. App. 529, 543 (2015) (quoting *Howard Cty. Dep’t of Soc. Servs. v. Linda J.*, 161 Md. App. 402, 407 (2005)).

“Under settled Maryland law, appellate review of administrative decisions is limited to those issues and concerns raised before the administrative agency.” *Capital Commercial Props., Inc. v. Montgomery Cty. Planning Bd.*, 158 Md. App. 88, 96 (2004) (citing *Mayor & City Council of Rockville v. Woodmont Country Club*, 348 Md. 572, 582 n.3 (1998)); accord *Kim v. Board of Liquor License Comm’rs*, 255 Md. App. 35, 47 (2022). Thus, a reviewing court may not pass upon issues when they are “‘presented to it for the first time on judicial review’” and were “‘not encompassed in the final decision of the administrative agency.’” *Concerned Citizens of Cloverly v. Montgomery Cty. Planning Bd.*, 254 Md. App. 575, 600 (2022) (quoting *Mesbahi v. Maryland State Bd. of Physicians*, 201 Md. App. 315, 333 (2011)) (further citation omitted).

“The ‘primary purpose’ of this rule ‘is to give the administrative agency the opportunity to decide the issue[.]’” *Id.* (quoting *Colao v. Maryland-Nat’l Capital Park & Planning Comm’n*, 167 Md. App. 194, 202 (2005)). But the rule is also informed by the doctrine of separation of powers, which restricts a court’s ability to review the decisions

of an administrative agency. *See id.* (citing *Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 530 (2003)).

Ms. Riley did not raise her statutory and constitutional challenges before the Board itself. Therefore, she has not preserved them for appellate review. Accordingly, we may not and do not consider them.²

We recognize that the Criminal Injuries Compensation Board is a lay board that appears to make many, if not most, of its decisions without the assistance of counsel. Nonetheless, there is no lay-board exception to the rule that a litigant cannot assert a factual or legal challenge to an agency’s decision for the first time on judicial review. If a future litigant presents the Board with arguments like those in Ms. Riley’s appellate brief, the Board will have an obligation to decide them. If the Board requires the assistance of counsel to evaluate the statutory and constitutional arguments that someone like Ms. Riley has asserted, it can call on the Office of the Attorney General, as it has done in the circuit court in this case and others and on appeal to this Court.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**

² This Court has previously rejected Ms. Riley’s statutory arguments in an unpublished opinion: *Dixon v. Criminal Injuries Comp. Bd.*, No. 817, Sept. Term 2019, 2020 WL 4018321 (Md. Ct. Spec. App. July 16, 2020).