

**CHAPTER 75**

**RULES RELATING TO PRACTICE AND PROCEDURE BEFORE THE NEW JERSEY VICTIMS OF CRIME COMPENSATION BOARD**

**Authority**

N.J.S.A. 52:4B-9.

**Source and Effective Date**

R.1999 d.157, effective April 21, 1999.  
See: 31 N.J.R. 739(b), 31 N.J.R. 1360(c).

**Executive Order No. 66(1978) Expiration Date**

Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Victims of Crime Compensation Board, expires on April 21, 2004.

**Chapter Historical Note**

Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was adopted as R.1972 d.261, effective December 21, 1972. See: 4 N.J.R. 277(a), 5 N.J.R. 53(a).

Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was repealed and Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was adopted as new rules by R.1984 d.342, effective August 20, 1984. See: 16 N.J.R. 846(a), 16 N.J.R. 2291(a).

Pursuant to Executive Order No. 66(1978), Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was readopted as R.1989 d.340, effective June 5, 1989. See: 21 N.J.R. 881(b), 21 N.J.R. 1832(b). Pursuant to Executive Order No. 66(1978), Chapter 75 expired on June 5, 1994.

Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was adopted as new rules by R.1994 d.364, effective July 5, 1994. See: 26 N.J.R. 1491(a), 26 N.J.R. 2805(b).

Chapter 75 was renamed as "Rules Relating to Practice and Procedure before the New Jersey Victims of Crime Compensation Board" by an administrative change, effective November 6, 1995. See: 27 N.J.R. 4441(a).

Pursuant to Executive Order No. 66(1978), Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Victims of Crime Compensation Board, was readopted as R.1999 d.157, effective April 21, 1999. See: Source and Effective Date.

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**SUBCHAPTER 1. PRACTICE AND PROCEDURE**

**13:75-1.1 Scope of rules**

The following rules shall constitute the practice to be followed in all proceedings before the Victims of Crime Compensation Board.

Administrative change.  
Sec: 27 N.J.R. 4441(a).  
Changed the name of the board.

**13:75-1.2 Liberal construction of provisions**

These rules shall be liberally construed by the Board to permit it to discharge its statutory function and secure equitable determinations in all matters before the Board.

**13:75-1.3 Practice where rules do not govern**

The Board may rescind, amend or expand these rules from time to time, provided the same is effected in accordance with the provisions of the New Jersey Administrative Procedure Act, and N.J.S.A. 52:4B-1 et seq. In any manner not expressly governed by these rules or by statute, the Board shall exercise its discretion.

**13:75-1.4 Definitions**

The definitions set forth in N.J.S.A. 52:4B-2 are hereby adopted by this Board and incorporated by reference in these rules.

**13:75-1.5 Filing of claims**

(a) For claim applications submitted prior to November 30, 1981, all claims must have been filed within one year of the date of the incident upon which the claim is based. For claim applications submitted on or after November 30, 1981, all claims must be filed within two years after the date of the

incident upon which the claim is based or, if after that date, upon determination by the Board that good cause exists for the delayed filing.

(b) The incident must have been reported to the police within three months of its occurrence.

(c) All claims must be filed on official forms which include an authorization for securing medical and other necessary records and a subrogation agreement. Having been completed and notarized, these should be forwarded to the office of the New Jersey Victims of Crime Compensation Board at either 50 Park Place, Newark, New Jersey 07102 or 194 West State Street, PO Box 084, Trenton, New Jersey 08625-0084, either in person or by mail. The official forms may be obtained by requesting them at the stated addresses or pursuant to the provisions of N.J.S.A. 52:4B-22. All forms should be returned within 30 days of the date original notification is given this office.

(d) If a claim is made by a minor, as defined under New Jersey law, the forms shall be signed by his parent or guardian unless New Jersey statutory provisions require otherwise. If a claim is made by a person who is mentally incompetent, the forms shall be signed by his guardian or such other individual who is authorized to administer his estate.

(e) At the time of filing the claim, the Board's Counseling Unit shall provide to the victim, counseling referral services as provided by N.J.S.A. 52:4B-25.

Amended by R.1985 d.630, effective December 16, 1985.

See: 17 N.J.R. 2010(b), 17 N.J.R. 2998(a).

(a) substantially amended.

Amended by R.1995 d.216, effective May 1, 1995.

See: 27 N.J.R. 307(a), 27 N.J.R. 1808(a).

Administrative change.

See: 27 N.J.R. 4441(a).

Changed the name of the board.

Administrative change.

See: 29 N.J.R. 150(a).

In (c), amended address.

#### Case Notes

One year limit for filing a compensation claim, as a substantive limitation period, may be tolled in a particular set of circumstances if the legislative purpose underlying the statutory scheme will thereby be effectuated; claim not barred. *White v. Violent Crimes Compensation Bd.*, 76 N.J. 368, 388 A.2d 206 (1978).

#### 13:75-1.6 Eligibility of claims

(a) The Board shall make an award solely to eligible victims of violent crimes as said crimes are defined by N.J.S.A. 52:4B-11.

(b) In instances where the victim of the crime has died as a direct result thereof, the Board may award compensation to the following persons:

1. A surviving spouse, parent, or child of the deceased victim who has suffered economic loss;

2. Any relative of the deceased victim as defined in N.J.S.A. 52:4B-2 who was dependent upon the victim for support, or any person who has cohabitated with the victim/decedent and who can establish by a preponderance of evidence that a dependency existed at the time of death of the victim. In examining the issue of loss of support as it relates to this paragraph, the Board shall consider any factor it deems relevant;

3. The relative, estate of, or other natural persons who have demonstrated out-of-pocket unreimbursed and unreimbursable medical and funeral expenses for which they have become responsible on behalf of the decedent due to the incident upon which the claim is based.

(c) For all incidents occurring on or after January 1, 1999, the Board may award compensation for loss of support to any victim or claimant who can establish by a preponderance of the evidence that, at the time of the incident, a dependency existed, upon the income or other economic contributions of the victim's assailant or offender, and which, as a result of the assailant/offender's incarceration, is no longer available to or accessible by the victim.

1. In computing the loss of support of the victim or claimant dependent, the Board shall only consider the assailant/offender's earnings and/or the amount of money or economic contributions the assailant/offender was actually contributing to the victim and victim's household at the time of the injury of the victim.

2. Where the dependents have received or are receiving a greater sum of money from other sources by reason of the incident giving rise to the claim for compensation than the sum contributed to their support by the assailant/offender at the time of incident, no compensation for loss of support shall be awarded to the dependents.

3. The Board, however, reserves the right to review its determination should the victim's dependency, marital or earning status be altered, and to modify its award accordingly.

4. Where a dependency upon the assailant/offender has been established, loss of support may be compensated only:

i. For a period not to exceed 48 months;

ii. During a period of incarceration of the assailant/offender for a minimum period of at least two weeks;

iii. Where the assailant/offender remains a fugitive from prosecution and/or his or her whereabouts remain unknown for a minimum period of at least two weeks;

iv. Where the assailant/offender has ceased providing support to the victim, in total or in part, due to the incident giving rise to the claim for a minimum period of at least two weeks;

v. Where compensation paid to the victim does not result in a substantial unjust enrichment to the assailant/offender as provided by (d)1 below;

vi. Where compensation paid to the victim does not relieve the assailant/offender from any monetary obligation imposed by the court or other legal document, prior to, as a direct result of or subsequent to the incident giving rise to the claim for compensation, as the assailant/offender's legal duty toward the victim, the victim's family or a member of the assailant/offender's family;

vii. Where the victim and/or claimant cooperates in the prosecution of the offender, including the filing and prosecution of a criminal complaint against the offender, unless a compelling health or safety reason is shown for a failure to so cooperate; and

viii. Where the victim has been determined to be eligible for compensation under N.J.S.A. 52:4B-1 et seq. and this chapter.

5. A victim and/or claimant shall not receive compensation for loss of support under this subsection for more than two separate incidents involving the same assailant/offender, nor receive more than one such award within a period of 12 consecutive months.

6. The victim and/or claimant shall inform the Board whether the assailant/offender continues, or commences again, to provide support, in total or in part, in any form, to the victim and/or family and whether the assailant/offender resides with the victim at any time subsequent to the incident giving rise to the claim for compensation. Failure to provide the Board with said information shall be a basis for denial or cessation of the payment of compensation and good cause for the Board to seek reimbursement for any award paid in the claim.

7. The Board reserves the right to seek reimbursement from the offender as provided by N.J.S.A. 52:4B-20 for any payments made to the victim and/or claimant under this chapter.

(d) Any claimant who is held by the Board to be responsible for the crime upon which a claim is based, or is held to have been an accomplice or conspirator of the offender is not eligible for compensation. For incidents occurring after March 3, 1983 and continuing through July 17, 1990, a relative of the offender or a victim living with the offender as a member of the offender's family relationship group may recover; if subsequent to the incident giving rise to the claim, the claimant no longer resides in the same household as the offender and the claimant cooperated in the prosecution of the offender.

1. For incidents and injuries occurring on or after July 17, 1990, the Board will apply the same standards that are applied to claims filed by victims of other violent crimes regardless of the familial relationship of the offender and the victim or the fact that they share a residence. How-

ever, no award will be made if compensation to the victim proves to be substantial unjust enrichment to the offender. Where the enrichment is inconsequential or minimal, compensation shall not be denied nor reduced. The factors to be considered in determining whether the unjust enrichment is substantial include, but are not limited to:

i. The amount of the award and whether it is made directly to the victim;

ii. Whether the offender has access to any cash payments coming into the household on behalf of the victim;

iii. Whether the award is essential to the well-being of the victim and other innocent and dependent family members;

iv. The amount of living expenses paid by the offender before and during the pendency of the claim;

v. If a significant portion of the award will be used directly by the offender for living expenses;

vi. The legal responsibilities of the offender to the victim;

vii. Collateral resources available to the victim from the offender which resources include, but are not limited to, court-ordered restitution or support and insurance and pension benefits. In evaluating collateral resources the Board may consider whether the offender has a legal responsibility to pay, whether the offender has resources to pay, and whether payment is likely. The victim will not be penalized for failure of the offender to meet his or her obligation to pay for the costs of the victim's recovery; and

viii. The offender's cooperation in providing the Victims of Crime Compensation Board with information concerning medical insurance coverage and any other information necessary for the Board to make a determination.

(e) The Board reserves the right to consider any circumstances it deems to be relevant, including, but not limited to, provocation, consent, participation in an illegal activity or behavior on the part of the victim which directly, or indirectly, contributed to his or her injury or death, the prior case history of the victim which may also include matters pertaining to the victim's medical history, and whether the victim cooperated with reasonable requests of law enforcement authorities or showed a compelling health or safety reason why they could not cooperate.

(f) No compensation shall be awarded if the victim is injured as a result of the operation of a motor vehicle, boat, or airplane unless the same was used as a weapon in the deliberate attempt to run the victim down, or the victim was injured in the commission of a violation of N.J.S.A. 39:4-50, 39:3-10.13 or 12:7-46, operating a motor vehicle, vessel or

commercial vehicle while under the influence of an intoxicating liquor or drugs as provided in N.J.A.C. 13:75-1.7(i). The Board may further order the payment of compensation to a victim who sustains personal injury or death as a result of an offender eluding a law enforcement officer in pursuit of that offender.

1. For incidents occurring on or after June 26, 1995, compensation shall be awarded which involve the theft of a motor vehicle wherein an offender with purpose to withhold temporarily from the owner or legal operator, takes, operates or exercises control over a motor vehicle without the consent of the owner or other person authorized to give consent and causes injury or death to a victim due to the unlawful use of said motor vehicle.

(g) "Eligible victims" shall include:

1. Non-residents and Federal crime victims on the same basis as State residents who are victims of a crime committed in the State;

2. Residents of the State injured in a foreign jurisdiction where said jurisdiction is without a victim compensation program; and

3. Residents of the State who have received a final determination from a foreign jurisdiction as to a claim filed with a victim's compensation program which determination has not fully compensated the victim or claimant for all out-of-pocket and unreimbursed and unreimbursable expenses.

4. However, where residents of the State are injured in a foreign state, said foreign state has primary jurisdiction and the State will not entertain a claim for compensation until victim or claimant has fully exhausted all available procedures for victim's compensation in said foreign state.

Amended by R.1988 d.108, effective March 7, 1988.

See: 19 N.J.R. 1967(b), 20 N.J.R. 543(b).

Added text in (d) "and whether the . . ."

Amended by R.1989 d.599, effective December 18, 1989.

See: 21 N.J.R. 2910(a), 21 N.J.R. 3929(a).

Added new (f), "Eligible victims."

Amended by R.1991 d.117, effective March 4, 1991.

See: 22 N.J.R. 3690(a), 23 N.J.R. 703(a).

Amendments bring rule into compliance with P.L. 1990 c.64 and the 1988 amendments to 42 U.S.C.A. 10601 et seq.

Amended by R.1991 d.116, effective March 4, 1991.

See: 22 N.J.R. 3691(a), 23 N.J.R. 704(a).

Establish guidelines for payment of compensation to victims of drunk driving.

Amended by R.1992 d.155, effective April 6, 1992.

See: 24 N.J.R. 54(a), 24 N.J.R. 1373(a).

Revised (c), (c)1 and (d).

Amended by R.1995 d.217, effective May 1, 1995.

See: 27 N.J.R. 307(b), 27 N.J.R. 1808(b).

Administrative change.

See: 27 N.J.R. 4441(a).

Changed the name of the board.

Amended by R.1996 d.73, effective February 5, 1996.

See: 27 N.J.R. 4131(a), 28 N.J.R. 886(a).

Rewrote (e).

Amended by R.1999 d.149, effective May 17, 1999.

See: 31 N.J.R. 590(a), 31 N.J.R. 1361(a).

Inserted a new (c); and recodified former (c) through (f) as (d) through (g).

### 13:75-1.7 Compensable damages

(a) The Board may enter an Order of Payment where the claimant has suffered a minimum out-of-pocket loss of \$100.00 as defined by N.J.S.A. 52:4B-18(d), or has lost at least two continuous weeks' earnings or support.

1. The minimum out-of-pocket loss required of (a) above shall not apply for incidents occurring upon or after December 6, 1982 where the applicant is 60 years of age or older, or is "disabled" as defined by 42 U.S.C. § 416(i), the Federal Social Service Act. Those to be categorized as "disabled" for the purposes of the Criminal Injuries Compensation Act of 1971 are people who, because of a previously determined physical or mental impairment, including blindness, can not engage in any substantial activity. In addition, their disability must be expected to result in death or have lasted, or potentially can last, for a continuous period of not less than 12 months.

2. For incidents of crime occurring on or after June 26, 1995, the minimum out-of-pocket loss requirements as stated in paragraph (a) above shall not be applicable.

3. Where the Board determines that because of the victim's conduct, the victim contributed to the infliction of his or her injury, the Board may limit the amount of the award, reduce it or deny compensation altogether. Where an award is to be limited or reduced due to contribution or other circumstances relating to the victim's behavior or action, said award shall not exceed \$12,500 in the aggregate.

(b) The Board may order the payment of compensation for expenses incurred as a result of the personal injury or death of the victim. These expenses must represent a pecuniary loss to the claimant as defined by N.J.S.A. 52:4B-1 et seq. and these rules consisting of, but not limited to, work and earnings loss, dependents' loss of support, other reasonable pecuniary loss incurred by claimant due to victim's death. The Board may also award payment for such allowable expenses which the Board determines to be reimbursable within these rules, such as reasonable charges for reasonably needed products and services, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.

1. The Board may order the payment of compensation for the loss of earning power as a result of the total or partial incapacity of the victim. Said loss includes work loss or loss of income the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he or she would have performed for income. In computing the earnings loss, the Board may consider any income received from substitute work actually performed by the claimant or any income that would have been earned through available appropriate substitute work he or she was capable of performing but unreasonably failed to undertake, and reduce the award, accordingly.