

(c) The maximum amount of any one emergency award shall not exceed \$500.00, however, the total amount of emergency funds awarded to an individual claimant shall not exceed \$1,500.00.

(d) Any emergency awards made to a claimant shall be deducted from the final amount of compensation awarded to said claimant. Where, however, the final amount is less than the sum of the emergency awards provided, or where the Board determines that an applicant shall receive no compensation, the claimant shall return to the Board an amount of money equal to the difference or repay the full amount of said awards.

(e) For incidents occurring on or after June 26, 1995, and whether or not the victim suffered personal injury, the Board may make an emergency award in an amount not to exceed \$200.00 for compensation for funds stolen directly from the person of the victim except in the case of a burglary, N.J.S.A. 52:4B-11(b)(ii), wherein no such award shall be made. The victim shall comply with the following prerequisites in order to be eligible to receive an emergency award under this subsection:

1. The victim is over 60 years of age or disabled as defined pursuant to the Federal Social Security Act, 42 U.S.C. § 416(i);
2. The victim's income in excess of Social Security benefits does not exceed the limits adopted by the State Department of Human Services as the standard of need for the General Assistance Program;
3. The funds stolen exceed \$50.00;
4. The victim has filed a police report indicating the amount of money stolen;
5. The victim has cooperated with investigative and prosecutorial authorities;
6. The victim has identified the source of the funds stolen;
7. The Board is satisfied that there are no other sources available to provide the victim with funds necessary to cover immediate costs of essential shelter, food or medical expenses;
8. The victim is the innocent victim of any one offense enumerated in N.J.S.A. 52:4B-11 except burglary; and
9. A victim shall not receive an emergency award pursuant to this section for no more than two separate incidents of crime victimization, nor receive more than one such award within a period of 36 consecutive months.

(f) Any such emergency award made by the Board shall be included in the final amount of compensation within the statutory maximum as set forth in these rules.

Amended by R.1996 d.77, effective February 5, 1996.
See: 27 N.J.R. 4134(b), 28 N.J.R. 888(b).

Added (e) and (f).
Amended by R.1998 d.228, effective May 4, 1998.
See: 30 N.J.R. 795(a), 30 N.J.R. 1619(b).
Inserted a new (a)1.

13:75-1.26 Subrogation

(a) If compensation is awarded to a claimant, the Board is subrogated to any cause of action claimant might have against the person or persons responsible for such personal injury or death and shall be entitled to bring an action against the same for the amount of the damage sustained by the claimant.

1. The Board may exercise its right only to the extent that compensation has been awarded by the Board.
2. Where the Board at its own discretion commences an action against the person or persons responsible for the victims injuries to recover monies compensated to a claimant, the claimant shall cooperate fully with the Board in pursuit of its action including, but not limited to, joining as a party to said action.

(b) As a prerequisite to bringing a collateral action to recover damages relating to criminally injurious conduct, for which compensation is also being claimed or has been awarded by the Board, the claimant shall give the Board prior written notice of the proposed action. After receiving the notice, the Board may at its discretion:

1. Join in the action as a party plaintiff to recover the compensation it has awarded; or
2. Require the claimant to execute an assignment to the Board for the amount of compensation it has awarded; or
3. Reserve its rights until such time as the action has been completed; or
4. Waive by Board resolution its rights under this section.

(c) Where the claimant brings the collateral action and recovers monies which the Board seeks as reimbursement for compensation awarded claimant by the Board, claimant may deduct from compensation recovered in behalf of the Board a pro rata share of claimant's attorney fees in the collateral action.

(d) Where there are proceeds or recovery from any collateral action or claim within N.J.A.C. 13:75-1.19(b)9, the Board shall exercise its subrogation only as to claimant's net proceeds so recovered that are in excess of \$1,000.00.

13:75-1.27 Counseling fees

(a) For all incidents occurring after July 1, 1991 and for services performed after July 1, 1991 on claims filed prior to July 1, 1991, the Board will pay out-of-pocket unreimbursable counseling and therapy expenses for each of the listed category of providers not to exceed the following amounts:

1. Psychiatrist \$150.00 per hourly session
2. Unlicensed Mental Health Practitioner practicing in compliance with N.J.S.A. 45:14B-6 (Psy.D., Ph.D., Ed.D.) \$110.00 per hourly session
3. State Licensed Psychologist . . \$110.00 per hourly session
4. A.C.S.W. \$ 90.00 per hourly session
5. Licensed Marriage and Family Therapist \$ 90.00 per hourly session
6. M.S.W. \$ 80.00 per hourly session
7. M.A. (jurisdictions other than New Jersey or in New Jersey practicing in compliance with N.J.S.A. 45:14B-6) \$ 80.00 per hourly session

See: 31 N.J.R. 3226(a), 32 N.J.R. 61(a).
In (c) and (d), added exceptions relating to N.J.A.C. 13:75-1.32.

13:75-1.28 Secondary victim eligibility

(a) A secondary victim means anyone who has sustained an injury or pecuniary loss as a direct result of a crime committed upon any member of said secondary victim's family or upon any person in close relationship to such secondary victim as the terms are, hereinafter, defined.

1. "Family", as used herein, is defined as spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents.

2. "Person in close relationship", as used herein, is defined as:

i. Any person, whether related by blood or adoption or not, who was actually domiciled with the direct victim on the date of the crime for which assistance is sought;

ii. Any person who is no longer living together with the direct victim but who has the legal responsibility to care for a child they have in common by birth or adoption solely where the treatment or presence of said person is medically required for the successful treatment of the child;

iii. Any person who has publicly announced his or her engagement to become married to the direct victim prior to the commission of the criminal act and who remains engaged to the direct victim at the time of the crime; or

iv. Any other individual who the Board deems under all the circumstances of a particular case to have had a close personal relationship with the direct victim.

(b) Secondary victims need not be present during the actual commission of the crime.

(c) In assessing the eligibility of secondary victims, the Board will be guided by N.J.S.A. 52:4B-10 and 18 and N.J.A.C. 13:75-1.6(d).

(d) Any loss for which the Board may reimburse a secondary victim or group of secondary victims shall not exceed a maximum of \$7,000.

(e) Individual psychotherapy in the case of secondary victims shall not exceed 24 sessions per secondary victim. However, where said secondary victim was physically present at the time of the crime as a witness or present immediately following its commission, the maximum individual counseling sessions permitted shall not exceed 30. In the case of any eligible death claim, the Board may authorize, subject to Board approval, an additional 15 counseling sessions for any secondary victim. Said sessions shall not include initial evaluation or impartial examinations authorized by the Board.

(b) For counseling disciplines not covered by the fee schedule in (a) above, and covered by N.J.S.A. 45:14B-8 and N.J.A.C. 13:42-5.1, the Board may, within its discretion pursuant to N.J.S.A. 52:4B-9, set an amount which shall not exceed \$90.00 per hourly session.

(c) Except as provided by N.J.A.C. 13:75-1.32 for cases determined to be catastrophic in nature, and notwithstanding (a) and (b) above, in the case of residential counseling services, the Board shall approve no more than one such period of counseling not exceeding 30 days in length and shall limit reimbursement to no more than 50 percent of the total cost of the service. Subsequent residential treatments shall not be compensated by the Board.

(d) Except as provided by N.J.A.C. 13:75-1.32 for cases determined to be catastrophic in nature, the Board shall award no compensation for out-of-pocket, unreimbursed or unreimbursable psychological counseling expenses related to the incident for an amount greater than \$10,000 for any eligible direct crime victim. However, the Board may authorize up to 100 counseling sessions for any direct victim on a case by case basis as determined by all the relevant evidence submitted for its consideration, notwithstanding the fact that the total cost of said 100 sessions exceed \$10,000. Secondary victim and group family therapy may be compensated in addition as provided by N.J.A.C. 13:75-1.28.

(e) The term sessions as used in this section means a one hour session and includes individual, group or family therapy and the presence of a counselor in a legal proceeding as determined by the Board to be necessary for the emotional support of the direct victim, claimant or secondary victim. No award of compensation shall be made for an appearance or presence required to assist in prosecution of the offender or in a proceeding to prosecute a collateral legal right.

New Rule, R.1991 d.332, effective July 1, 1991.
See: 23 N.J.R. 167(b), 23 N.J.R. 2023(c).
Amended by R.1991 d.492, effective October 7, 1991.
See: 23 N.J.R. 2269(b), 23 N.J.R. 3034(b).
Added (c), (d), (e).
Amended by R.1995 d.210, effective April 17, 1995.
See: 27 N.J.R. 467(a), 27 N.J.R. 1643(a).
Amended by R.1997 d.309, effective August 4, 1997.
See: 29 N.J.R. 1482(a), 29 N.J.R. 3458(c).
Substantially amended (d); and deleted (d)1 and 2.
Amended by R.2000 d.3, effective January 3, 2000.

1. Additionally, the Board shall award compensation for family therapy sessions to all direct victims, not to exceed 20 sessions, wherein the direct victim and any member of the direct victim's family, as it is defined under (a)1 above, are counseled together and at the same session.

2. Where the direct victim or secondary victim is counseled by way of support group or other form of group therapy in which no other member of the direct or secondary victim's family is included, said counseling session shall be considered as one personal individual session.

3. All costs for psychotherapy sessions will be subject to the provisions of N.J.A.C. 13:75-1.27.

(f) Loss of earnings may only be awarded to a secondary victim where said loss is solely related to the care of the direct victim during the direct victim's medically determined period of disability due to the criminal incident, which has resulted in the direct victim's incapacity to carry out reasonable and normal day-to-day functions.

New Rule, R.1991 d.333, effective July 1, 1991.
See: 23 N.J.R. 168(a), 23 N.J.R. 2024(a).
Amended by R.1995 d.375, effective July 17, 1995.
See: 27 N.J.R. 1528(a), 27 N.J.R. 2701(a).
Amended by R.1995 d.434, effective August 21, 1995.
See: 27 N.J.R. 2372(b), 27 N.J.R. 3202(b).

In (e), provided for 15 additional counseling sessions for death claims.

Amended by R.1998 d.201, effective April 20, 1998.
See: 30 N.J.R. 292(a), 30 N.J.R. 1422(a).

Rewrote (e).

13:75-1.29 Procedure to request Board action to promulgate, amend or repeal rules

(a) Persons requesting Board action to promulgate, amend or repeal rules shall comply with P.L. 1981, c.27, § 11 (N.J.S.A. 52:24B-4(f)) and any amendments thereto and any implementing rules as adopted by the Office of Administrative Law.

(b) Such persons may obtain forms for petitioning this Board's Administrative Code rules from the Violent Crimes Compensation Board.

(c) When considering the petition, the Board shall comply with time lines and procedures contained in P.L. 1981, c.27, § 11 (N.J.S.A. 52:14B-4(f)).

New Rule, R.1992 d.157, effective April 6, 1992.
See: 24 N.J.R. 55(a), 24 N.J.R. 1374(a).

13:75-1.30 Determinations, presumptions and burdens of proof

(a) Applicants filing petitions for compensation have the burden of proof as to eligibility of the claim filed and as to all its elements and items of compensation. This burden of proof is met by a preponderance of the credible evidence.

(b) The Board may give substantial weight to conclusions of investigative law enforcement agencies and dispositions of criminal proceedings including, but not limited to, pleas of guilt and jury verdicts, but considered along with all other evidence, the ultimate determination made on a claim application is the obligation of the Board uncontrolled by determinations of others.

New Rule, R.1992 d.158, effective April 6, 1992.
See: 24 N.J.R. 55(b), 24 N.J.R. 1374(b).

13:75-1.31 Eligibility of claimants for personal injury resulting from the crime of burglary

(a) Pursuant to the provisions of N.J.S.A. 52:4B-11(b)11, the Board shall make an award to eligible victims of the crime of burglary when an actor, without license or privilege, enters a structure not open to the public with the purpose of committing another offense, other than trespass or entry, or remains in a structure knowing that there is no license or privilege to do so.

(b) "Structure" shall mean any residence, building, room or any place adapted for overnight accommodation of a person. For purpose of this provision, a motor vehicle is not to be considered as a "structure."

(c) In order to be eligible to receive compensation as a victim of the crime of burglary, the victim must have:

1. Been a resident, owner, or invited guest of the structure burglarized;
2. Been present in the structure at the time of the burglary and either witnessed the burglary itself or subsequently observed the results thereof; and
3. Suffered physical and/or emotional distress directly related to the burglary.

(d) A secondary victim, as defined by N.J.A.C. 13:75-1.28, may be eligible for compensation under this section as a secondary victim solely where the criteria in (c)2 and 3 above have been satisfied.

(e) No award shall be made for loss or theft of personal property secondary to a burglary.

New Rule, R.1993 d.134, effective March 15, 1993.
See: 24 N.J.R. 4491(b), 25 N.J.R. 1224(b).

13:75-1.32 Catastrophic claims

(a) The Board may make one or more supplemental awards for the purpose of providing rehabilitative assistance and services to catastrophically injured crime victims determined eligible for compensation within provisions set by this section, notwithstanding the fact that said payments may, in the aggregate, exceed the statutory maximum award as provided by N.J.A.C. 13:75-1.7(g).

1. A catastrophically injured crime victim who received a compensation award prior to July 15, 1999 is

eligible for supplemental compensation as provided in this section.

2. Compensation under this section may be awarded in lump sum or periodic payments; however, any compensation awarded shall not exceed the actual cost of the rehabilitative service(s) enumerated in (c) below.

3. Compensation for rehabilitative assistance includes those services not covered by other sources as defined by N.J.A.C. 13:75-1.19.

4. A denial of an application for compensation made pursuant to this section shall not be subject to appeal.

5. The burden of proof is upon the victim and/or claimant to prove and establish, by a preponderance of the credible evidence, eligibility for compensation as a catastrophically injured crime victim. Speculation and conjecture as to a potential increase in disability, mere loss of earnings, cumulative injuries minor in nature and, among other things, subjective statements of the victim without a demonstration of catastrophic injury by way of objective medical evidence and professional medical analysis is not sufficient to meet the burden of proof.

i. The Board may order the examination of an injured victim and a report, thereon, from an impartial medical expert, if necessary, prior to a determination of eligibility under this section and periodically, as it deems appropriate, for the continued award of compensation to a catastrophically injured crime victim.

ii. In order to reaffirm and verify eligibility for compensation, the victim and/or claimant shall annually submit in writing a request to the Board for continuance of catastrophic compensation together with a report demonstrating objective medical evidence and professional medical analysis of catastrophic crime related injury. The expense incurred in securing said report shall be reimbursed by the Board as if prepared by an impartial medical expert.

(b) A catastrophically injured crime victim is a person who has sustained a severe long term or life long personal injury as a result of the offenses specified as compensable pursuant to N.J.S.A. 52:4B-11.

1. In determining whether the personal injury is catastrophic so as to be eligible for compensation under this section, the Board shall take into consideration all of the following factors:

i. Whether the victim has suffered significant and sustained reduction in the former function of mental and physical abilities which dramatically alters the victim's ability to interact with others and to carry on the normal functions of life;

ii. Whether there has been a lessening to a material degree of a victim's working ability;

iii. Whether there has been a physical or neurophysical impairment where no fundamental or marked improvement in the victim's crime related condition can be reasonably expected;

iv. The severity and debilitating nature of the personal injury including, but not limited to, conditions such as quadriplegia, paraplegia, loss of sight in both eyes, loss of hearing in both ears and amputation of a major portion of an extremity; and

v. Whether the injury is permanent or long term.

(c) The Board shall award compensation not to exceed the monetary cap established in this section and in (e) below where it deems the rehabilitative service(s) to be reasonable and necessary. Compensation for loss of earnings, loss of support, property damage and pain and suffering is excluded. Services for which compensation may be awarded include, but are not limited to, the following:

1. Surgical and therapeutic procedures;

2. Rehabilitative physical and occupational therapy designed to restore an optimum function level; however, the Board shall award no compensation for chiropractic services for a period of greater than 90 visitations for treatments and visits. Where a direct catastrophic victim has been compensated for or attended more than 90 such visitations as of the date that victim has been determined eligible for catastrophic compensation, the Board shall award no compensation for chiropractic services for an additional period greater than 30 sessions;

3. Prescription drugs and medical supplies;

4. Cognitive and psychological therapy; however, the Board shall award no compensation for out-of-pocket, unreimbursed or unreimbursable psychological counseling expenses related to the incident for an amount greater than \$20,000 for any eligible direct catastrophic crime victim;

i. The Board may authorize up to 200 counseling sessions for any direct catastrophic crime victim on a case by case basis as determined by all the relevant evidence submitted for its consideration, notwithstanding the fact that the total cost of said 200 sessions exceed \$20,000. Secondary victim and group family therapy may be compensated in addition, but solely as provided by N.J.A.C. 13:75-1.28;

5. Home health assistance;

6. Vehicle modifications;

7. Driver training;

8. Wheelchair, braces, splints, crutches, walkers, shower, commode chair and any other personal adaptive equipment required to meet individual disability needs;

9. Structural modifications to living environment designed to provide accessibility and to maximize independence; and

10. As needed dependent care as defined by N.J.A.C. 13:75-1.22.

(d) Every claimant making application to the Board for compensation for catastrophic injury is required to produce verification for and provide evidence of all out-of-pocket expenses and injuries claimed as compensable items, and the Board shall consider solely those expenses and injuries for which such verification and evidence is so produced. Verification must be provided that the services listed in (c) above are related to the date of the incident and/or the recovery period in question.

1. Subject to (a)5 above, prior approval from the Board shall be requested for the services listed in (c) above which have not been contracted for and/or completed on January 3, 2000.

2. The Board's prior approval and/or payment of the expense incurred shall not be considered as a warranty of the services provided or fitness for use of any of the products and materials provided or improvements made, the workmanship performed or the capability and license of the provider to perform said service.

3. Although prior approval for a particular service(s) has been granted by the Board, compensation shall only be awarded upon notice given to the Board by the

claimant of completion of said service(s) and request to the Board made by the claimant for payment of the completed service.

(e) For all claims filed with the Board prior to or after January 3, 2000, and subject to the individual monetary caps established by the Board in other sections of this chapter, compensation awarded to catastrophically injured crime victims shall not exceed a supplemental amount of \$25,000 in out-of-pocket aggregate expenses. The award of compensation for catastrophic injury related services shall be entered by the Board in addition to any award of compensation for which a crime victim may be found eligible if the victim had filed an application for non-catastrophic crime related injuries.

1. The services listed in (c)6 through 9 above shall be compensated solely for the benefit of catastrophically injured crime victims.

(f) Out of funds appropriated for the administration of the Criminal Injuries Compensation Act of 1971, N.J.S.A. 52:4B-1 et seq., and subject to the provisions of N.J.S.A. 52:4B-9, the Board shall annually set aside an amount of funds it determines to be reasonable for the purposes of compensation of catastrophic claims. Additional funds may be set aside, as the Board determines reasonable and necessary.

New Rule, R.2000 d.3, effective January 3, 2000.
See: 31 N.J.R. 3226(a), 32 N.J.R. 61(a).