

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 USC Sec. 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.

2. In computing the earnings loss of the victim/claimant or in the case of death, the loss of support of the claimant/dependent, the Board shall only consider the victim's earnings and/or the amount of money the decedent was contributing to the household at the time of the injury or death of the victim. Where the dependents of a decedent have received or are receiving a greater sum of money from other sources by reason of the decedent's death than the sum contributed to their support by the decedent at the time of death, no compensation for loss of support shall be awarded to the dependents. The Board, however, reserves the right to review its determination should the claimant's dependency, marital or earnings status be altered, and to modify its award accordingly.

i. Notwithstanding the date of the incident, for any application filed after April 6, 1992, the maximum reimbursement for loss of earnings shall not exceed a total of 104 weeks. For a victim who has been rendered permanently disabled as defined by 42 U.S.C. 1381 et seq., loss of earnings may be awarded for a period of 260 weeks (five years). In either case the victim shall enroll in a retraining or rehabilitation program or establish that the victim's disability prevents participation in such program or participation in gainful employment. Maximum reimbursement for loss of support in death claims shall not exceed that of 48 months.

(c) Every claimant making application to the Board for compensation is required to produce verification for and provide evidence of all losses and injuries claimed as compensable items in said application, and the Board shall consider solely those losses and injuries for which such verification and evidence is so produced.

(d) In making its award the Board shall make no allowance for pain and suffering.

(e) In claims involving the death of a victim, the maximum reimbursement for funeral expenses shall be as follows:

1. For incidents occurring before January 10, 1980, \$750.00;

2. For incidents occurring on or after January 10, 1980, \$2,000; and

3. For incidents occurring on or after June 7, 1993, \$3,000.

(f) Unless otherwise permitted by these rules and the provisions of N.J.A.C. 13:75-1.25(e), the Board shall limit its award to losses incurred as a result of personal injury or death resulting from a violent crime as defined by N.J.S.A. 52:4B-11. All property damage is specifically excluded.

(g) For injuries resulting from incidents occurring on or after December 7, 1982, no compensation shall be awarded in an amount in excess of \$25,000. For incidents occurring on or prior to December 6, 1982, the maximum compensation shall not exceed \$10,000. These limitations shall remain in effect until statutory law provides otherwise.

1. For incidents occurring on or after June 26, 1995, any claim for compensation shall expire five years after the entry of an initial determination order. No further order is to be entered with regard to the claim except for requests for payment of specific out-of-pocket expenses received by the Board prior to the expiration of the five year period or for expenses for which the Board had notice or should reasonably have known existed prior to the expiration of the stated five year period.

(h) Unless otherwise provided for by N.J.S.A. 52:4B-1 et seq. and these rules, an award for compensation may be made whether or not any person is prosecuted or convicted for the crime giving rise to the claim before the Board.

(i) No passenger in a motor vehicle, vessel or commercial vehicle who knew or reasonably should have known that the driver was operating the vehicle or vessel while under the influence of alcohol or drugs is eligible for compensation.

1. In order for a victim to be eligible for compensation, it is not necessary that the offender is convicted of a violation under N.J.S.A. 39:4-50, 39:3-10.13 or 12:7-46 nor that a blood alcohol test be administered to the offender. However, the victim or claimant must demonstrate by a preponderance of the credible evidence that the incident involved driving a vehicle or operating a vessel while under the influence of alcohol or drugs.

i. "Under the influence" as used in this subsection means a substantial deterioration or diminution of mental faculties or physical capabilities of a person whether due to intoxicating liquor, narcotic, hallucinogenic or habit-producing drugs.

ii. In any matter involving a violation of N.J.S.A. 39:4-50 or 12:7-46 relating to driving a vehicle or operating a vessel while under the influence of intoxicating liquor, the following factors will be taken into account:

(1) A blood alcohol reading of .10 percent is prima facie evidence of a violation of N.J.S.A. 39:4-50;

(2) A blood alcohol reading in excess of 0.05 percent but less than 0.10 percent shall not give rise to any presumption that the offender was or was not under the influence of intoxicating liquor, but such fact may be considered with any other competent evidence;

(3) A blood alcohol reading of 0.05 percent or less shall give rise to the presumption that the offender was not under the influence of intoxicating liquor; and

(4) A blood alcohol reading of .04 percent is prima facie evidence of a violation of N.J.S.A. 39:3-10.13, operating a commercial vehicle while under the influence.

2. The Board may deny or reduce an award if the Board finds the victim was not wearing protective equipment such as a safety belt or if the victim is the operator of a second vehicle and does not have automobile insurance as required by law.

(j) The Board shall award no compensation for chiropractic or physical therapy services for a period greater than 30 visitations for treatment related to the incident notwithstanding the nature of said treatments and visits. Where direct victims, claimants or secondary victims have been compensated for or attended more than 30 such visitations (as of October 7, 1991), the Board shall award no compensation for chiropractic or physical therapy services for an additional period greater than six sessions beyond the date of last service.

(k) The Board may deny compensation to a claimant unless the claimant has satisfied any and all Violent Crimes Compensation Board assessments imposed pursuant to N.J.S.A. 2C:43-3.1 and restitution ordered by the courts to be paid specifically to the Board until such time as proper proof is submitted verifying satisfaction of said obligations.

1. Where possible the Board may forward the amount of the outstanding assessment and/or restitution directly to the proper collection authority from any proceeds of the award of compensation the Board may make to or on behalf of the victim or claimant.

(l) The Board shall make no award for compensation to or on behalf of a victim or claimant during any period of their incarceration and may close the claim without prejudice. Upon release from any period of incarceration the claimant may petition the Board to reopen the claim.

1. No compensation shall be awarded for incidents occurring on or after December 23, 1991 if the victim sustained injuries while incarcerated for the conviction of a crime. Factors to be considered in determining incarceration shall include, but not be limited to, restraints placed on personal liberty; freedom from mobility; and whether the individual is under the care, custody and control of any penal institution or similar institution.

2. Where a victim is injured while serving a non-custodial sentence or while incarcerated for reasons other than conviction of a crime, or injured while incarcerated prior to December 23, 1991, the Board shall take all relevant matters into consideration including, but not limited to, the following:

i. The provisions of N.J.S.A. 52:4B-9 requiring the Board to consider the availability of funds as appropriated by the State in awarding compensation;

ii. Whether the victim assumed a reasonable risk of injury under all the circumstances of the case;

iii. Whether the victim had reason to believe that his or her actions would result in arrest, conviction, sentence and incarceration;

iv. The likelihood of the victim's conviction for the allegations serving as the basis for the victim's incarceration;

v. The nature of the offense and the sentence imposed; and

vi. The disposition of the charges by the criminal justice system.

(m) The Board shall award compensation for expenses incurred as a result of the relocation of a victim and/or his or her family with the victim due to the incident forming the basis of the victim's claim before the Board where the Board determines there is a need to protect the health and safety of the victim and/or their family and that all other statutory requirements for eligibility are met.

1. In determining this need, the Board shall take into consideration:

i. The nature of the crime;

ii. The amount of danger the offender poses to the victim and/or his or her family;

iii. The degree of injury the victim sustained;

iv. The criminal case history of the offender and the offender's record while incarcerated;

v. Prior acts of the offender;

vi. What efforts the victim and/or his or her family have undertaken in order to protect themselves from further harm;

vii. The offender's sentence and period of incarceration whether for the crime forming the basis of the claim filed with the Board or through a plea bargain on related or unrelated charges; and

viii. Any other relevant factors.

2. Compensation for moving expenses shall be paid for relocation of victim's family solely where the victim resided with the family at the time of the incident and, except where the crime resulted in the death of the victim, the victim relocated to the new premises with the family.

3. Maximum reimbursement for moving expenses shall be \$1,000. Related moving expenses may include truck rental, moving services, and rental and mortgage cost differential between vacated and new premises.

4. A victim or claimant may only seek compensation for moving expenses once for each claim filed with the Board.

5. In the case of an arson fire, compensation may be awarded pursuant to this section, solely where the Board determines that there is a need to protect the health and safety of the victim and victim's family members from further acts of violence perpetrated intentionally and specifically directed at the victim and victim's family by the offender.

(n) Where a criminal act has caused injury or death to a service animal trained and certified for the specific purpose of assisting an individual who is disabled or who requires the service of such an animal to perform day-to-day routine functions, the injured animal's crime related medical treatment and replacement cost incurred due to the animal's injury are compensable up to a maximum of \$5,000. Funeral expenses for the animal shall not be compensated by the Board. Counseling to the animal's owner shall be limited to no more than 15 sessions, payment to be made pursuant to fee schedule in N.J.A.C. 13:75-1.27.

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.1991 d.492, effective October 7, 1991.  
See: 23 N.J.R. 2269(b), 23 N.J.R. 3034(b).

In (a), added text limiting the total award made to a claimant.

In (b), deleted "replacement service loss (defined below)" and "accommodations, replacement tuition costs"; added "The Board may also award payment for".

Deleted (b)2.

Added (j).

Amended by R.1992 d.156, effective April 6, 1992.  
See: 24 N.J.R. 54(b), 24 N.J.R. 1373(b).

Revised (b); added (b)2i.

Amended by R.1992 d.301, effective July 20, 1992.  
See: 24 N.J.R. 1862(a), 24 N.J.R. 2628(a).

Added new (k) and (l).

Amended by R.1993 d.133, effective March 5, 1993.

See: 24 N.J.R. 4491(a), 25 N.J.R. 1224(a).

Revised (a).

Amended by R.1993 d.250, effective June 7, 1993.

See: 24 N.J.R. 674(a), 25 N.J.R. 2488(c).

Amended by R.1994 d.364, effective July 5, 1994.

See: 26 N.J.R. 1491(a), 26 N.J.R. 2805(b).

Amended by R.1995 d.374, effective July 17, 1995.

See: 27 N.J.R. 1527(a), 27 N.J.R. 2700(b).

Amended by R.1995 d.453, effective August 21, 1995.

See: 27 N.J.R. 2372(a), 27 N.J.R. 3202(a).

Added (5) regarding compensation for arson fire victims.

Amended by R.1996 d.74, effective February 5, 1996.

See: 27 N.J.R. 4133(a), 28 N.J.R. 887(c).

In (i), added vessels and commercial vehicles, added references to N.J.S.A. 39:3-10.13 and 12:7-46, and added 1ii(4).

Amended by R.1996 d.75, effective February 5, 1996.

See: 27 N.J.R. 4132(b), 28 N.J.R. 887(b).

Added (g)1.

Amended by R.1996 d.76, effective February 5, 1996.

See: 27 N.J.R. 4132(a), 28 N.J.R. 887(a).

Added (a)2 and 3.

Amended by R.1996 d.77, effective February 5, 1996.

See: 27 N.J.R. 4134(b), 28 N.J.R. 888(b).

In (f) added N.J.A.C. 13:75-1.25(e).

Amended by R.1996 d.78, effective February 5, 1996.

See: 27 N.J.R. 4134(a), 28 N.J.R. 888(a).

Added (a)2.

Amended by R.1997 d.307, effective August 4, 1997.

See: 29 N.J.R. 1481(a), 29 N.J.R. 3458(a).

Added (n).

Amended by R.1997 d.476, effective November 17, 1997.

See: 29 N.J.R. 3596(b), 29 N.J.R. 4860(a).

### 13:75-1.8 Investigation of claims

All claimants under the law creating the Board must fully cooperate with investigators, agents, and/or representatives of the Board in order to be eligible for any award. The claimant shall advise the Board of any and all changes of address and residence to permit the Board to properly process the claim petition. In the event that such cooperation is refused or denied, the Board may in its discretion deny such claim.

### 13:75-1.9 Request for hearings

(a) After investigation of a claim has been completed, the claimant shall be informed of the Board's recommendation in the matter and of his right to request a hearing by giving written notice to the Board within 20 days of receipt of the recommendation. After receipt of the claimant's response to said recommendation or where claimant fails to respond within 20 days, the Board may render a decision in writing or schedule a hearing pursuant to N.J.S.A. 52:4B-7.

(b) The Board may within its discretion make a determination whether further action concerning the application is necessary.

### 13:75-1.10 Conduct of hearings

(a) When a hearing is ordered, the claimant, his or her attorney, and all material and necessary parties, shall be notified in writing of the time, place and purpose of any such hearing. This notice shall be mailed not less than 15 days before the date of hearing, unless waived by the claimant. At the discretion of the Board, any issue may be considered and determined although not indicated in the notice of the hearing, if the administration of N.J.S.A. 52:4B-1 et seq. will thereby be substantially served.

(b) Hearings shall be held at a time and place designated by the Board.