

13:75-1.17 Publication of claims

The Board, from time to time, may publish the record of claims and, at its discretion may divulge names of the claimants or other interested parties pursuant to the laws of the State governing disclosure of public records and the right to privacy.

13:75-1.18 Availability of forms and rules

The Board shall prepare and furnish, free of cost, and shall have available on request at the Board's offices, such forms and rules as the Board determines necessary to fulfill its statutory function. Such forms shall include, but not be limited to, claim petitions, emergency award applications, medical report and earnings record authorization, counseling services request, and subrogation agreements.

13:75-1.19 Moneys received from other sources

(a) In determining the amount of compensation to be awarded, the Board shall take into consideration amounts received or receivable from other "source or sources" by the victim or his dependents as a result of the offense or occurrence giving rise to the application.

(b) "Source or sources" means a source of benefits or advantages which the claimant has received in lieu of economic loss or which is readily available to the claimant from, but not limited to:

1. The offender;
2. The government of the United States or any agency thereof, the State or any of its political subdivisions, or an instrumentality of two or more states;
3. Social Security, Medicare, and Medicaid;
4. State required temporary non-occupational disability insurance;
5. Worker's Compensation;
6. Wage continuation programs of any employer;
7. Proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminal-injurious conduct;
8. A contract providing prepaid hospital and other health care services or benefits for disability; or
9. The net amount received by the victim or claimant in excess of \$1,000 in the case of any related civil suit for damages and all proceeds or recovery to the victim or claimant from any collateral action or claim based upon or arising out of the circumstances giving rise to claimant's petition before the Board.
 - i. Even though there exists a judgment, verdict, settlement, adjudication or any other resolution in and/or of a collateral action or claim which indicates, defines or specifies that the proceeds or damages, or any other legal or economic loss classification or remedy, repre-

sent an item of loss which the Board does not compensate, such as pain and suffering and property damage, the Board, within its discretion, may consider said proceeds in defining money received from other sources.

Amended by R.1993 d.74, effective February 16, 1993.
See: 24 N.J.R. 4239(a), 25 N.J.R. 710(a).
Revised (b)9.

Amended by R.1997 d.308, effective August 4, 1997.
See: 29 N.J.R. 1481(b), 29 N.J.R. 3458(b).

In (b)9i, amended to clarify what may be considered as money from other sources.

13:75-1.20 Validity of rules if any portion declared invalid

If any portion of these rules, or the application thereof, shall be adjudged or declared to be invalid, or inoperative, or if by statutory amendment any rules shall lose its force and effect, such judgment or amendment shall not affect, impair or void the remainder of these rules.

13:75-1.21 Loss of earnings or support

Amounts awarded by the Board as weekly compensation for unreimbursable or unreimbursed losses in earnings or support shall not exceed the maximum prevailing weekly benefit payable under Worker's Compensation schedules in effect in this State at the time of the injury for those incidents which occurred between the effective date of the Criminal Injuries Compensation Act of 1971 and December 31, 1982. For injuries arising from incidents which occur upon or after January 1, 1983, the weekly rate shall be fixed by the Board pursuant to N.J.S.A. 52:4B-9.

13:75-1.22 Domestic help

(a) The reimbursement for expenses arising out of the hiring of domestic help to care for a minor child or for an adult who may or may not be the victims of the crime alleged in claimant's application, but who, nevertheless, are in need of such service and/or assistance as a direct result of said crime, shall be set by the Board.

(b) The Board shall make a determination in each case as to a reasonable period of time for the employment of domestic help, however, the maximum reimbursement for said period shall be \$30.00 per day except that the total amount of such reimbursement shall not exceed \$100.00 per week.

13:75-1.23 (Reserved)

Repealed by R.1991 d.492, effective October 7, 1991.
See: 23 N.J.R. 2269(b), 23 N.J.R. 3034(b).
Former title "Lost member schedule."

13:75-1.24 Transportation costs

(a) Maximum reimbursement for transportation expenses incurred as a direct result of the incident giving rise to the claim shall not exceed \$10.00 a day and shall include, but not be limited to, visits to treating physicians, health and care facilities, and substitute travel costs other than ambu-

lance or ambulatory mobile care services secondary to securing medically related services incurred due to a criminally-induced physical incapacity for which an eligible claim has been filed with the Board. All nonmedically related transportation costs are excluded other than attendance at court proceedings for purposes of prosecuting the alleged offender. However, reimbursement for the purpose of this section does not include the costs arising pursuant to N.J.A.C. 13:75-1.13.

1. The cost of transportation other than by medical transport, for the purposes of securing compensation from the Board, is excluded. Reimbursement for transportation costs pursuant to (a) above shall be at the rate of 20 cents per mile up to the maximum daily of \$10.00 a day.

2. Necessary and reasonable transportation expenses incurred, such as railroad and airline fare which are a direct result of the incident and incidental to treating and caring for the victim, and for attendance at a victim's funeral, may be reimbursed to claimant or to victim's relatives as defined by N.J.S.A. 52:4B-2 at a maximum of \$200.00 per person and not to exceed \$1,000 in total.

Amended by R.1991 d.514, effective October 21, 1991.

See: 23 N.J.R. 2482(a), 23 N.J.R. 3170(b).

In (a)1, added "and for attendance at victim's funeral" and "at a maximum of \$200.00 per person and not to exceed \$1,000 in total."

Amended by R.1997 d.503, effective December 1, 1997.

See: 29 N.J.R. 4074(a), 29 N.J.R. 5074(a).

Rewrote (a); inserted new (a)1; and recodified existing (a)1 as (a)2.

13:75-1.25 Emergency award

(a) The Board may grant an emergency award where such grants could help prevent financial hardship or stress which might not otherwise arise, forcing persons, among other things, to go on welfare or be evicted from their homes because of inability to make rent or other payments while at the same time paying medical expenses, or where a person cannot maintain a reasonable level of health, safety and education for himself or his dependents.

(b) The claimant has the burden of showing the need for such emergency awards and must do so by the preponderance of the credible evidence. The Board shall consider all relevant factors in making its determination.

(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).

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

(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) 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) 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 crime victim on a case-by-case basis as determined by all relevant evidence submitted for consideration, notwithstanding the fact that the total cost of said 100 sessions exceeds \$10,000. Secondary victim and group or 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.

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.

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(a).

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.