

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Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was repealed and Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was adopted as new rules by R.1984 d.342,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.
See: 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, vessel 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, airplane 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 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.

2. Unrelated to its normal operation, where a motor vehicle, vessel, airplane or commercial vehicle is used as a weapon, including, but not limited to, as a vehicle to carry explosives with intent to detonate the same to inflict a deliberate injury, the Board shall consider such use as a compensable "crime involving violence" as set forth in N.J.S.A. 52:4B-11(b)(10).

(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).

Amended by R.1999 d.301, effective September 7, 1999.

See: 31 N.J.R. 1461(a), 31 N.J.R. 2625(a).

In (f), inserted a reference to vessels and a reference to airplanes in the introductory paragraph, and added 2.

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.

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;
3. For incidents occurring on or after March 10, 1990, \$3,000; and
4. For incidents occurring on or after January 1, 1999, \$3,500.

(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).

Amended by R.1999 d.240, effective August 2, 1999.
See: 31 N.J.R. 1292(a), 31 N.J.R. 2225(a).

In (e), added 4.

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.

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/child care/day care

(a) The reimbursement for expenses arising out of the hiring of domestic help or providing child care and/or day care for a minor child or for an adult who may or may not be the victims of the crime alleged in the claimant's application, but who, nevertheless, are in need of such services 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 and the need for child care and day care services; however, the maximum reimbursement for domestic help shall be \$50.00 per day, except that the total amount of such reimbursement shall not exceed \$6,500 in the aggregate. As used in this section, domestic help is defined, as services to the victim which, taken as a whole, are not medically related other than providing assistance so that the victim may take prescribed medicine and do simple therapeutic exercises. Domestic help includes, but is not limited to, housecleaning, laundry tasks, companionship and other services related to providing day-to-day living support for the victim.

(c) Child care/day care services are those which entail supervising and/or tending to the needs of a child or an adult who may or may not have been physically injured as a result of a crime where such service would enable a victim, spouse, surviving spouse of a deceased victim or guardian to continue employment rather than incur a loss of earnings because of the need to provide care for an adult or minor victim or a dependent adult or child of a victim. Also included is after care service for the period between school dismissal and the time a parent, guardian or one delegated the responsibility, picks up the child, and before care service for any additional period required prior to the start of the school day.

1. Reimbursement for child care/day care services shall not exceed \$6,500 in the aggregate.

2. Day care expenses shall be reimbursed solely where the dependent child is 14 years old or less. Where a licensed day care facility is utilized, documentation as to license must be provided to the Board.

3. Where domestic help and/or child care/day care services are provided by a family member and/or private individual, out-of-pocket expenses shall be verified through canceled checks, paid receipts and other appropriate evidence.

4. Verification shall be provided by the claim applicant that child care/day care services are related to the date of the incident and/or the recovery period in question.

(d) Not included within this section are health care services provided by an individual with a medical license or individual, institution or company that has fulfilled State of New Jersey mandated medical education and or licensing requirements prior to being permitted to dispense health and medically related services. Health care service providers include, but are not limited to, medical doctors, registered nurses, hospitals, licensed practical nurses, and State licensed health care facilities and aides. Such service shall be reimbursed by the Board up to the statutory maximum possible.

Amended by R.1999 d.18, effective January 19, 1999.
See: 30 N.J.R. 3761(a), 31 N.J.R. 136(b).

In (a), substituted "or providing child care and/or day" following "domestic help" for "to" at the beginning; rewrote (b); and added (c) and (d).

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 ambulance 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.

1. In the case of death claims, emergency payments may be made on behalf of the claimant directly to the provider of funeral services where undue hardship as determined by the Board can be shown and eligibility of the claim proven.

(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).

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.

(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.
 Sec: 24 N.J.R. 4491(b), 25 N.J.R. 1224(b).