

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.1994 d.364, effective July 5, 1994.
See: 26 N.J.R. 1491(a), 26 N.J.R. 2805(b).

Executive Order No. 66(1978) Expiration Date

Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, expires on July 5, 1999.

Chapter Historical Note

Chapter 75 Violent Crimes and Compensation Board was filed and became effective December 21, 1972 as R.1972 d.261. See: 4 N.J.R. 277(a), 5 N.J.R. 53(a). Sections 21 and 22 were filed and became effective May 23, 1973 as R.1973 d.137. See: 5 N.J.R. 119(a), 5 N.J.R. 195(c). It was repealed and a new chapter adopted as R.1984 d.342.

Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was filed and became effective December 21, 1972, as R.1972 d.261. See: 4 N.J.R. 277(a), 5 N.J.R. 53(a). Amendments were filed and became effective May 23, 1973 as R.1973 d.137. See: 5 N.J.R. 119(a), 5 N.J.R. 195(c). Chapter 75 was repealed and new rules were adopted as R.1984 d.342. Pursuant to Executive Order No. 66(1978), Chapter 75 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, and subsequently was adopted as new rules by R.1994 d.364. 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). See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. PRACTICE AND PROCEDURE

Authority

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

Source and Effective Date

R.1984 d.342, effective August 20, 1984.
See: 16 N.J.R. 846(a), 16 N.J.R. 2291(a).

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 60 Park Place, Suite 1010, Newark, New Jersey 07102 or 194 West State Street, CN 084, Trenton, New Jersey 08625, 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.

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) 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. However, 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.

(d) 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.

(e) No compensation shall be awarded if the victim was 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 same was used in the commission of a crime as defined by N.J.S.A. 52:4B-11 and the victim was injured by the same during the commission of said crime, as provided in N.J.A.C. 13:75-1.7(i).

(f) "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.

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.

(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, 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 \$25,000.00. For incidents occurring on or prior to December 6, 1982, the maximum compensation shall not exceed \$10,000.00. These limitations shall remain in effect until statutory law provides otherwise.

(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 who knew or reasonably should have known that the driver was operating the vehicle 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 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 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 relating to driving a vehicle 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 other competent evidence; and

(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.

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.

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.

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.

(c) The claimant has the right to be present at the hearing, however, the claimant may be excused at his request. Claimant shall be allowed to present testimony or cross-examine witnesses personally or by counsel. Failure of the claimant to appear at the time of the hearing may be excused and a new hearing scheduled if the Board finds that good cause has been shown.

(d) Any person having a substantial interest in a proceeding may appear, produce evidence and cross-examine witnesses personally or by counsel. However, said appearance must be based upon a valid application or claim petition before the Board, submitted by an eligible victim, and in full compliance with N.J.A.C. 13:75-1.8.

(e) All hearings shall be conducted in an orderly manner so as to ascertain the rights of all parties. All witnesses shall testify under oath and a record of the proceedings shall be made. Any member of the Board may administer oaths and/or affirmations and may question the claimant and witnesses.

(f) The parties or their representatives shall be allowed a reasonable time for presentation of oral argument or for the filing of briefs or other statements as to the facts and questions of law. The claimant shall have the burden of proof by the preponderance of the credible evidence.

(g) The Board shall not be bound by common law or statutory rules of evidence or by any technical or formal rules of procedure other than as provided for in these rules. Any statement, document, or information necessary to afford the parties a fair hearing may be received as evidence. The Board may also accept hospital records or reports and physician's reports as proof of the injuries sustained without requiring the presence of the attending physician at the hearing.

(h) The Board may require a medical examination of the claimant by a physician selected from a panel of impartial medical experts. The claimant shall present himself to the physician selected at the time and place designated. A written report of such examination shall be filed with the Board by the examining physician and a copy mailed by the Board to the claimant or his attorney. The physician's fee shall be paid by the Board.

(i) Hearings shall be open to the public except that the Board in its discretion may hold private hearings in accordance with applicable legal requirements if the interest of the victim and/or claimant will be best served. In the following instances the Board may exercise its discretion:

1. Where prosecution against the alleged perpetrator of the crime is pending and/or the Board determines that there is a continuing or ongoing investigation of the crime;

2. In an alleged sexual offense where the welfare and interest of the victim or dependents may be adversely affected;

3. In the interest of public morality;

4. Where prosecution has resulted in an acquittal or a dismissal on technical grounds;

5. Where the Board determines that because of a public hearing one or more of the parties will be subjected to public ridicule or personal mental anguish or embarrassment.

(j) Upon application of the claimant or his attorney submitted in affidavit or motion form, a case may be reopened for further investigation, and, if the Board finds it necessary, for further testimony. Approval of a motion to reopen proceedings shall not be deemed a matter of right but rather a matter within the Board's discretion. The Board may, on its own motion, reopen or reinvestigate cases at any time it deems necessary.

13:75-1.11 Attorneys

(a) Claimants have the right to be represented before the Board or any member, thereof, at all stages of proceedings, by an attorney-at-law duly licensed to practice in the State of New Jersey, or qualified to make such appearance pursuant to the Rules Governing the Courts of New Jersey, Rule 1:21-1(a).

(b) The attorney shall file a notice of appearance, or when appropriate, a notice of substitution prior to or at the time of his first appearance before the Board.

(c) If any party designates an attorney to represent said party and such attorney has executed and filed with the Board the appropriate notice, such notice shall remain in effect until:

1. The party represented files with the Board a written revocation of the attorney's authorization; or

2. The attorney files with the Board a written statement of his withdrawal from the case; or

3. The attorney states on the record at a Board hearing that he is withdrawing from the case; or

4. The Board received notice of the attorney's death or disqualification, and

5. The Board approved said attorney's removal from participation in the matter.

(d) After the filing of a notice of appearance or substitution in accordance with this section and as long as such notice may remain in effect, copies of all written communications or notices to the party shall be sent to such attorney in lieu of the party so represented or to both the party and his attorney at the Board's discretion. Service upon the attorney shall be service upon the party he represents.

13:75-1.12 Attorney's fees

(a) Attorney's fees shall be approved by the Board. Whenever an award is made, the claimant's attorney shall receive an hourly fee as outlined in (b) below, which fee shall not exceed 15 percent of the amount awarded as compensation. An attorney shall not ask for, contract for, or receive from the claimant any sum other than the fee set by the Board.

(b) Where an Order of Denial is entered by the Board, the Board shall make no award of a legal fee to the attorney for the claimant. Where an appearance is made pursuant to N.J.A.C. 13:75-1.10(d), and a subsequent Order of Denial is entered, the Board shall make no award of a legal fee.

(c) For all claim applications filed prior to July 1, 1990, attorney's fees shall be computed on an hourly basis and shall not exceed a maximum of \$50.00 per hour.

1. For all claim applications filed on or after July 1, 1990, attorney's fees shall be computed on an hourly basis at the rate of \$75.00 per hour. Where an appearance is made pursuant to N.J.A.C. 13:75-1.10(d) which results in an Order of Payment, the Board shall award a fee of \$300.00 for said appearance notwithstanding the amount of time spent in attending said hearing.

2. The Board shall require an affidavit of service where attorney's fees exceed \$1,500. Said affidavit must include an hourly accounting of work completed by the attorney in direct relation to the claim before the Board.

(d) All records of public agencies that are necessary to the investigation of a claim shall, whenever possible, be obtained by the Board. Therefore, no payment will be made to an attorney for obtaining such reports unless the Board had made a specific request of the claimant and or of his attorney for such reports.

Amended by R.1990 d.501, effective October 15, 1990.
See: 22 N.J.R. 2260(a), 22 N.J.R. 3237(a).

Added new (c)1. and 2., provisions for \$75.00 per hour computation of fees and requirement of affidavit of service where fees exceed \$500.00.

Amended by R.1993 d.251, effective June 21, 1993.
See: 24 N.J.R. 674(b), 25 N.J.R. 2489(a).

13:75-1.13 Subpoenas

(a) The Board shall issue subpoenas and subpoenas duces tecum, either at its own instance or upon written application of any party made not less than 10 days prior to the hearing. The 10 days provision may be waived at the discretion of the Board.

(b) The claimant may file an application for the issuance of a subpoena and the Board may issue the same upon the showing of necessity that the evidence sought constitutes an element of the claim. The claimant's application for subpoena shall be in writing designating the names and addresses of witnesses and the locations of documents, books,

payrolls, personal records, correspondence, papers or any other evidence necessary to the claim being heard.

(c) Where a subpoena is issued pursuant to (b) above or at the instance of the Board or any member thereof, service and witness mileage fees shall be borne by the Board. The mileage fee shall be the prevailing rate on the date of the appearance as established by the State Department of Treasury.

(d) The Board, at its own instance or on application in writing of the claimant, shall take or cause to be taken affidavits or depositions of witnesses residing within or without the State, whenever it deems such procedures necessary. The Board may set appropriate terms and conditions pertaining to the taking of affidavits or depositions. The requesting party shall bear the expense, however, where the Board enters an Order of Payment the Board may consider said expense as a reasonable expense incurred for reimbursement purposes.

13:75-1.14 Manner of payments

(a) All payments made by the Board shall be made in a lump sum amount, except in instances of death or protracted disability the Board shall exercise its discretion in determining whether payments are to be made in a lump sum or periodically.

1. Where periodic payments have been ordered in a death case, the Board shall verify the dependency and financial status of the claimant at least every six months. Upon discovering a change in circumstances, either by marriage or otherwise, the Board may adjust the award and payments accordingly.

2. Where periodic payments have been ordered in a protracted disability case, the Board may at least every six months verify the disability of the claimant to determine whether the claimant is entitled to continue to receive payments either in the amount awarded or in such amount as the Board deems appropriate.

3. Where periodic payments have been ordered the maximum period for said payments shall not exceed 60 months.

13:75-1.15 Decisions by the board

(a) In order to be eligible for review by the Board, all evidence must have been filed with the Board. If the procedure listed herein is not followed, the Board may in its discretion delay its decision or a hearing until the foregoing prerequisite has been completed with.

(b) The Board shall render its decision regarding the application within six months of receipt by the Board of all information necessary for it to render a final judgment in the matter.

13:75-1.16 Judicial review

Appeals from the Board shall be taken directly to the Appellate Division of the Superior Court pursuant to the rules set forth by the Supreme Court of the State of New Jersey in Rule 2:2-3.

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-ly 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 said collateral action or claim which indicates or specifies that the proceeds or recovery are based upon economic loss, pain and suffering, punitive damages, or any other legal or economic loss classification, the Board, within its discretion, may consider said resolution in defining "source or 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.

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, substitute travel costs other than ambulance or ambulatory mobile care services incurred due to a criminally-induced physical incapacity, and attendance at court proceedings for purposes of prosecuting the alleged offender. However, reimbursement for the purpose of this section does not include costs arising pursuant to N.J.A.C. 13:75-1.13.

1. 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."

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.

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 a period greater than 50 sessions for any victim or claimant 18 years of age or older, and for no more than 100 sessions for any victim under the age of 18 (on October 7, 1991) notwithstanding the date upon which the application for compensation was filed.

1. For any claim wherein the Board has approved and awarded compensation for 50 sessions of counseling services for a victim or claimant 18 years of age or older or 100 sessions of counseling services for a victim under the age of 18 years, the Board shall award no more than 12 sessions beyond the date of last service (as of October 7, 1991).

2. In those instances where it has been shown by a preponderance of the evidence that the direct victim/minor has no psychological, emotional, mental, drug or alcohol-related problems which pre-date the crime on which a claim is based, the Board as of April 17, 1995 may, in its discretion, award such additional psychological counseling sessions for the direct victim/minor as it deems appropriate.

(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).

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 scene 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. Additionally, the Board shall award compensation

for family group therapy sessions not to exceed 20 sessions wherein the victim and members of the victim's family, as defined under (a)1 above, are counseled as one. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Been a resident, owner, or invited guest of the structure burglarized;

2. Been present in the structure at the time of the burglary and either witnessed the burglary itself or subsequently observed the results thereof; and

3. Suffered physical and/or emotional distress directly related to the burglary.

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

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

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