

2. Where the Board at its own discretion commences an action against the person or persons responsible for the victims injuries to recover monies compensated to a

claimant, the claimant shall cooperate fully with the Board in pursuit of its action including, but not limited to, joining as a party to said action.

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

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

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

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

13:75-1.27 Counseling Fees

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

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

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

(c) Notwithstanding (a) and (b) above, in the case of residential counseling services the Board shall approve no

more than one such period of counseling not exceeding 30 days in length and shall limit reimbursement to no more than 50 percent of the total cost of the service. Subsequent residential treatments shall not be compensated by the Board.

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

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

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

13:75-1.28 Secondary victim eligibility

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

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

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

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

person is medically required for the successful treatment of the child;

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

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

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

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

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

(e) Individual psychotherapy in the case of secondary victims shall not exceed 24 sessions per secondary victim. However, where said secondary victim was physically present at the 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. See: 24 N.J.R. 4491(b), 25 N.J.R. 1224(b).

New Rule, R.1993 d.134, effective March 15, 1993.