

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.

1. Except for claims of catastrophically injured crime victims (N.J.A.C. 13:75-1.32), subject to the availability of State appropriated funds 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.

2. 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.

3. 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 a program or participation in gainful employment. Maximum reimbursement for loss of support in death claims shall not exceed that of 48 months.

ii. The weekly maximum reimbursement for loss of earnings shall not exceed the amount set forth for each of the calendar years listed below:

2005	\$600.00
2004	\$575.00
2003	\$550.00
2001-2002	\$525.00
1999-2000	\$500.00
1998	\$475.00
1993-1997	\$431.00
1992	\$409.00
1991	\$385.00
1990	\$370.00
1989	\$342.00
1988	\$320.00
1987	\$302.00
1986	\$269.00
1982-1985	\$217.00

(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;
4. For incidents occurring on or after January 1, 1999, \$3,500; and
5. For incidents occurring on or after July 1, 2001, \$5,000.

(f) Unless otherwise permitted by these rules and the provisions of N.J.A.C. 13:75-1.25(e), the Board shall limit

its award to losses incurred as a result of personal injury or death resulting from a violent crime as defined by N.J.S.A. 52:4B-11. All property damage is specifically excluded except as provided for bedding and clothing pursuant to (p) below and funds stolen pursuant to N.J.S.A. 13:75-1.25(e).

(g) Except as provided by N.J.A.C. 13:75-1.32 for cases determined to be catastrophic in nature, 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 in an amount 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. Except as provided by N.J.A.C. 13:75-1.32 for cases determined to be catastrophic in nature, 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) Except as provided by N.J.A.C. 13:75-1.32 for cases determined to be catastrophic in nature, the Board shall award no compensation for chiropractic or physical therapy services for a period of greater than 30 visitations for treatments and visits. When 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 the 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 and may close the claim without prejudice during any period of their incarceration or where a court ordered bench warrant for the victim or claimant's arrest remains active or where criminal charges are pending against the victim or claimant due to the filing of a criminal complaint and/or return of an indictment. Upon release from any period of incarceration or submission to the Board of verification from the court that the bench warrant, criminal complaint or indictment has been dismissed or otherwise disposed of, the victim or 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 his or her family and that all other statutory requirements for eligibility are met.

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

- i. The nature of the crime;
- ii. The amount of danger the offender or others who may be associated with the offender pose 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;

viii. Any other relevant factors; and

ix. The emotional, psychological and physical impact on the victim and/or his or her family which may result through a failure to relocate.

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 \$2,500. Related moving expenses may include truck rental, security deposit, temporary shelter, personal expense items of the claimant which the Board may deem to be reasonable and necessary under the circumstances, moving services, and monthly rental and mortgage cost differential and, subject to any limitations set forth in (o) below, the cost of no more than five days shelter and lodging in a location other than the residence wherein the crime scene is located and which has been vacated due to the need to clean the crime scene.

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.

6. This subsection shall also apply to situations involving organized gangs where the claimant is requested to testify on behalf of the State of New Jersey in a criminal prosecution and the claimant is placed in fear for his safety due to terroristic threats or other criminal activity. The facts supporting eligibility for compensation under this section may be established through certification by a member of the State of New Jersey Division of Criminal Justice attesting to same.

7. Due to the emergent need of relocation funds in many situations, any time consuming documentation proof requirements may be lessened at the Boards discretion.

(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 treat-

ment 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.

(o) Except in the case of arson, the Board shall award compensation for the reasonable and necessary costs for cleaning the scene, wherein criminally injurious conduct occurred, which costs have become the financial responsibility of the direct victim or claimant and for which reimbursement from other sources, as defined by N.J.A.C. 13:75-1.19, is not available including, but not limited to, homeowner's or other property insurance and funding from law enforcement and other governmental entities. Awards of compensation made by the Board shall not supplant existing State and Federal funding sources for crime scene cleanup.

1. Cleaning a crime scene means to remove, or attempt to remove, from the crime scene, blood, dirt, stains or debris which requires hauling and dumping as a result of the crime or the processing of the crime scene and may include the reasonable out-of-pocket cost of cleaning supplies, equipment rental and labor purchased as a direct result of the crime.

2. Compensation awarded for crime scene cleanup costs shall not include replacement and/or repair expenses for personal property, other than as allowed pursuant to (p) below, and furniture which has been rendered damaged or useless as a result of the crime or the collection of evidence for purposes of investigating the crime.

3. A crime scene, for purposes of compensation, shall be considered solely as a residence, leased or otherwise, where the injurious conduct occurred, of either a direct victim of a crime, a family member of the victim or person in close relationship to a victim as the terms "family" and "person in close relationship" are defined by N.J.A.C. 13:75-1.28(a). Places of employment, a vehicle or public access not considered part of the residence premises are excluded unless the victim or claimant has become financially responsible for the cleanup costs.

4. Cleanup services compensated by the Board may only be performed by a professional cleaning agency or service which specializes in crime scene cleanup. However, the Board may authorize compensation for cleanup services performed by the victim or claimant or by an individual or agency of their choosing where the need for such services is immediate or, under all the circumstances of the incident, preferred by the victim or claimant or where the crime is not an indictable offense.

5. Compensation for crime scene cleanup shall be awarded solely through an eligible claim for compensation filed with the Board by, or on behalf of, a direct victim of a crime who has suffered an injury or death. Claims seeking exclusively reimbursement for crime scene cleanup shall not be eligible for an award of compensation, but may be merged with and compensated through a crime related eligible claim as described in this paragraph.

6. Compensation awarded for crime scene cleanup shall not exceed \$1,500 in the aggregate.

(p) The Board shall award compensation for the reasonable replacement value of bedding and clothing, solely, which has been removed from a crime scene as defined in (o)3 above, and held for evidentiary purposes, but not returned to the victim or claimant within a reasonable amount of time and, if returned, rendered useless or damaged by forensic processes used to collect evidence.

1. Bedding, as defined in this subsection, shall include solely a mattress, box spring, linen and pillows. The bed frame and headboard are excluded.

2. Compensation shall not be awarded for the clothing or bedding of a deceased victim which is held as evidence unless it is verified that such items were not personal to the decedent alone, but were items shared by the decedent within the claimant's household.

3. Compensation for evidence replacement may be awarded solely through an eligible claim for compensation filed with the Board by, or on behalf of, a direct victim of a crime.

4. Compensation awarded for evidence replacement, which has not been reimbursed from other sources as defined by N.J.A.C. 13:75-1.19, shall not exceed \$500.00 in the aggregate.

(q) The Board may award compensation for the reasonable replacement value of carpeting, doors, windows and locks. The total amount which may be awarded under this section shall not exceed \$2,000 in the aggregate.

(r) The Board may allow payment up to a maximum of \$1,000 at an hourly rate of \$125.00 per hour to an attorney who provides legal assistance to a victim in explaining and enforcing the victim's rights in the criminal justice system provided the attorney has successfully completed an attorney training program sponsored by the Board.

(s) The Board may, within its discretion, prioritize the various items of payment for any claim, in the event it determines that the maximum amount of \$25,000 payable by the Board will be or is likely to be reached.

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 (h)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.
 Amended by R.2000 d.3, effective January 3, 2000.
 See: 31 N.J.R. 3226(a), 32 N.J.R. 61(a).
 In (b), (g) and (j), inserted exceptions relating to N.J.A.C. 13:75-1.32 throughout.
 Amended by R.2000 d.78, effective March 6, 2000.
 See: 31 N.J.R. 4223(a), 32 N.J.R. 813(b).
 Inserted (b)2ii.
 Amended by R.2001 d.174, d.175, d.176, effective June 4, 2001.
 See: 33 N.J.R. 764(b), 33 N.J.R. 765(a), 33 N.J.R. 766(a), 33 N.J.R. 1922(a), 33 N.J.R. 1923(a), 33 N.J.R. 1923(b).
 Rewrote the section.
 Amended by R.2001 d.332, effective September 17, 2001.
 See: 33 N.J.R. 1499(a), 33 N.J.R. 3340(a).
 Added (e)5.
 Amended by R.2003 d.61, effective February 3, 2003.
 See: 34 N.J.R. 1326(a), 35 N.J.R. 620(a).
 Added 2002 to the weekly reimbursement table.
 Amended by R.2004 d.89, effective March 1, 2004.
 See: 35 N.J.R. 507(a), 36 N.J.R. 1197(a).
 In (b)3ii, added 2003 to the reimbursement table.
 Amended by R.2004 d.169 and d.170, effective May 3, 2004.
 See: 36 N.J.R. 410(a), 36 N.J.R. 410(b), 36 N.J.R. 2200(a), 36 N.J.R. 2200(b).
 In (b), amended the N.J.S.A. reference in the introductory paragraph, and added entries for the years 2003 through 2005 in the weekly reimbursement table in 3ii; added (q) through (s).
 Amended by R.2004 d.209, effective June 7, 2004.
 See: 36 N.J.R. 1173(a), 36 N.J.R. 2789(a).
 In (m), rewrote ii and ix in 1, rewrote 3, and added 6 and 7.

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 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 an 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. For all applications filed on or after October 1, 2003, attorney's fees shall be computed on an hourly basis at the rate of \$125.00 per hour. Where an appearance is made at a Board hearing 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 up to \$300.00 for said appearance notwithstanding the amount of time spent in attending said hearing so long as the aggregate of the hourly and hearing attendance fee shall not exceed 15 percent of the amount awarded as compensation.

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).

Amended by R.2001 d.330, effective September 17, 2001.

See: 33 N.J.R. 1499(b), 33 N.J.R. 3340(b).

Rewrote (c)1.

Amended by R.2004 d.171, effective May 3, 2004.

See: 36 N.J.R. 411(a), 36 N.J.R. 2200(c).

In (c), added the second sentence in 1.

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 nec-

essary. 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.

i. The Board may order the examination of an injured victim and a report, thereon, from an impartial medical expert, if necessary, prior to a determination of eligibility under this section and periodically, as it deems appropriate, for the continued award of compensation to a catastrophically injured crime victim.

ii. In order to reaffirm and verify eligibility for compensation, the victim and/or claimant shall annually submit in writing a request to the Board for continuance of catastrophic compensation together with a report demonstrating objective medical evidence and professional medical analysis of catastrophic crime related injury. The expense incurred in securing said report shall be reimbursed by the Board as if prepared by an impartial medical expert.

(b) A catastrophically injured crime victim is a person who has sustained a severe long term or life long personal injury as a direct result of the offenses specified as compensable pursuant to N.J.S.A. 52:4B-11. Supplemental catastrophic crime victim compensation to secondary victims as defined by N.J.A.C. 13:75-1.28 is excluded.

1. In determining whether the personal injury is catastrophic so as to be eligible for compensation under this section, the Board shall take into consideration all of the following factors:

i. Whether the victim has suffered significant and sustained reduction in the former function of mental and physical abilities which dramatically alters the victim's ability to interact with others and to carry on the normal functions of life;

ii. Whether there has been a lessening to a material degree of a victim's working ability;

iii. Whether there has been a physical or neurophysical impairment where no fundamental or marked improvement in the victim's crime related condition can be reasonably expected;

iv. The severity and debilitating nature of the personal injury including, but not limited to, conditions such as quadriplegia, paraplegia, loss of sight in both eyes, loss of hearing in both ears and amputation of a major portion of an extremity;

v. Whether the injury is permanent or long term; and

vi. Whether an extreme medical risk exists which substantially increases functional impairment or risk of death if the medical services are not provided expeditiously.

2. Where a victim is receiving benefits as a result of being determined permanently disabled pursuant to the provisions of 42 U.S.C. §§ 1381 et seq. as a result of a crime forming the basis of an application for crime victim compensation before the Board, there shall be a presumption that said victim is a catastrophically injured crime

victim. However, the victim shall submit to the Board a copy of the determination of permanent disability of the Social Security Administration and supportive medical documentation.

(c) The Board shall award compensation not to exceed the monetary cap established in this section and in (e) below where it deems the rehabilitative service(s) to be reasonable and medically necessary as evidenced by written prescription for the service by a provider of medical service(s) licensed in this State or in a foreign state where the victim might receive the service(s). In determining the amounts of compensation, the Board and the provider of medical service(s) shall be guided by the maximum rates and service limitations for reimbursement for medical and medical related expenses established by the Board pursuant to N.J.S.A. 52:4B-9. Compensation for loss of earnings, loss of support, property damage, living expenses such as food, shelter and clothing necessitated by the victim's medical condition, expenses incurred for vocational training services and continuing education in educational institutions, and pain and suffering is excluded. Services for which compensation may be awarded include, but are not limited to, the following:

1. Surgical and therapeutic procedures;

2. Rehabilitative physical and occupational therapy designed to restore an optimum function level; however, the Board shall award no compensation for chiropractic services for a period of greater than 90 visitations for treatments and visits. Where a direct catastrophic victim has been compensated for or attended more than 90 such visitations as of the date that victim has been determined eligible for catastrophic compensation, the Board shall award no compensation for chiropractic services for an additional period greater than 30 sessions;

3. Prescription and over the counter drugs and medical supplies which are physician authorized and Federal Drug Administration approved and related to the crime related incapacity;

4. Cognitive and psychological therapy; however, 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 \$20,000 for any eligible direct catastrophic crime victim;

i. The Board may authorize up to 200 counseling sessions for any direct catastrophic crime victim on a case by case basis as determined by all the relevant evidence submitted for its consideration, notwithstanding the fact that the total cost of said 200 sessions exceed \$20,000. Secondary victim and group family therapy may be compensated in addition, but solely as provided by N.J.A.C. 13:75-1.28;

5. Home health assistance;

6. Vehicle modifications upon submission to the Board in the form of a medical prescription or of other

medical proof indicating the victim's need for the modifications;

i. The maximum compensation for vehicle modifications shall not exceed \$15,000 in the aggregate.

ii. Reimbursement or compensation for the purchase or lease of a vehicle, insurance payments and replacement and repair of parts, service and maintenance of the vehicle and modification are excluded.

iii. Compensation for vehicle modification shall be limited to the one vehicle which serves as the victim's principle conveyance.

iv. The victim and/or claimant shall maintain motor vehicle insurance including, but not limited to, collision insurance in an amount that is sufficient to cover the cost of replacement or repair of the vehicle modification features for which the Board has previously awarded compensation;

7. Driver training;

8. Wheelchair, braces, splints, crutches, walkers, shower, commode chair and any other personal adaptive equipment required to meet individual disability needs;

9. Structural modifications to living environment solely to the victim's proven principle place of residence, designed to provide accessibility and to maximize independence. Modifications to vacation and secondary homes are excluded unless the claimant can show that the vacation or secondary home has become the claimant's principal place of residence, that ownership of the original primary residence, the modification of which the Board has previously awarded compensation under this section, has legitimately been sold to a party other than the claimant's family and that the original primary residence is no longer available for the use of the claimant or claimant's family.

i. Structural modifications to the physical plant and/or equipment owned by an employer are excluded.

ii. The vendor and the victim and/or claimant are responsible for all permits, licenses, insurance and inspections as required by Federal, State and/or municipal statutes and codes for the premises to be modified.

iii. The maximum compensation for structural modifications shall not exceed \$15,000 in the aggregate.

10. Subject to medical prescription, as needed dependent care and domestic help as defined by N.J.A.C. 13:75-1.22;

11. Speech therapy; the maximum compensation awarded for speech therapy shall not exceed \$3,500;

12. Subject to the review and approval of the Board, experimental medical treatment/experimental drugs which are recognized by Federal or State agencies and provided by licensed health care providers; and

13. Upon a showing that the service provided is a rehabilitative service as defined in (a)3 above, telecommunications, sensory and other technological aids and devices and interpreter services.

(d) Every claimant making application to the Board for compensation for catastrophic injury is required to produce verification for and provide evidence of all out-of-pocket expenses and injuries claimed as compensable items, and the Board shall consider solely those expenses and injuries for which such verification and evidence is so produced. Verification must be provided that the services listed in (c) above are related to the date of the incident and/or the recovery period in question.

1. Subject to (a)5 above, prior approval from the Board shall be requested for the services listed in (c) above which have not been contracted for and/or completed on January 3, 2000.

2. The Board's prior approval and/or payment of the expense incurred shall not be considered as a warranty of the services provided or fitness for use of any of the products and materials provided or improvements made, the workmanship performed or the capability and license of the provider to perform said service.

3. Although prior approval for a particular service(s) has been granted by the Board, compensation shall only be awarded upon notice given to the Board by the claimant of completion of said service(s) and request to the Board made by the claimant for payment of the completed service.

(e) For all claims filed with the Board prior to or after January 3, 2000, and subject to the individual monetary caps established by the Board in other sections of this chapter, compensation awarded to catastrophically injured crime victims shall not exceed a supplemental amount of \$25,000 in out-of-pocket aggregate expenses. The award of compensation for catastrophic injury related services shall be entered by the Board in addition to any award of compensation for which a crime victim may be found eligible if the victim had filed an application for non-catastrophic crime related injuries.

1. The services listed in (c)6 through 9 above shall be compensated solely for the benefit of catastrophically injured crime victims.

(f) Out of funds appropriated for the administration of the Criminal Injuries Compensation Act of 1971, N.J.S.A. 52:4B-1 et seq., and subject to the provisions of N.J.S.A. 52:4B-9, the Board shall annually set aside an amount of funds it determines to be reasonable for the purposes of compensation of catastrophic claims. Additional funds may be set aside, as the Board determines reasonable and necessary.

New Rule. R.2000 d.3. effective January 3, 2000.
See: 31 N.J.R. 3226(a), 32 N.J.R. 61(a).

Amended by R.2000 d.296, effective July 17, 2000.

See: 32 N.J.R. 1496(a), 32 N.J.R 2597(a).

Rewrote (a) through (c).