

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 Victims of Crime 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 It was repealed and a new chapter adopted as R.1984 d.342.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 Chapter 75 was repealed and new rules were adopted as R.1984 d.342.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 50 Park Place, 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.

Administrative change.

See: 29 N.J.R. 150(a).

In (c), amended address.

Case Notes

One year limit for filing a compensation claim, as a substantive limitation period, may be tolled in a particular set of circumstances if the legislative purpose underlying the statutory scheme will thereby be effectuated; claim not barred. *White v. Violent Crimes Compensation Bd.*, 76 N.J. 368, 388 A.2d 206 (1978).

13:75-1.6 Eligibility of claims

(a) The Board shall make an award solely to eligible victims of violent crimes as said crimes are defined by N.J.S.A. 52:4B-11.

(b) In instances where the victim of the crime has died as a direct result thereof, the Board may award compensation to the following persons:

1. A surviving spouse, parent, or child of the deceased victim who has suffered economic loss;

2. Any relative of the deceased victim as defined in N.J.S.A. 52:4B-2 who was dependent upon the victim for support, or any person who has cohabitated with the victim/decedent and who can establish by a preponderance of evidence that a dependency existed at the time of death of the victim. In examining the issue of loss of support as it relates to this paragraph, the Board shall consider any factor it deems relevant;

3. The relative, estate of, or other natural persons who have demonstrated out-of-pocket unreimbursed and unreimbursable medical and funeral expenses for which they have become responsible on behalf of the decedent due to the incident upon which the claim is based.

(c) 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 is 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 victim was injured in the commission of a violation of N.J.S.A. 39:4-50, 39:3-10.13 or 12:7-46, operating a motor vehicle, vessel or commercial vehicle while under the influence of an intoxicating liquor or drugs as provided in N.J.A.C. 13:75-1.7(i). The Board may further order the payment of compensation to a victim who sustains personal injury or death as a result of an offender eluding a law enforcement officer in pursuit of that offender.

1. For incidents occurring on or after June 26, 1995, compensation shall be awarded which involve the theft of a motor vehicle wherein an offender with purpose to withhold temporarily from the owner or legal operator, takes, operates or exercises control over a motor vehicle without the consent of the owner or other person authorized to give consent and causes injury or death to a victim due to the unlawful use of said motor vehicle.

(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.

Amended by R.1996 d.73, effective February 5, 1996.

See: 27 N.J.R. 4131(a), 28 N.J.R. 886(a).

Rewrote (e).

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.

2. For incidents of crime occurring on or after June 26, 1995, the minimum out-of-pocket loss requirements as stated in paragraph (a) above shall not be applicable.

3. Where the Board determines that because of the victim's conduct, the victim contributed to the infliction of his or her injury, the Board may limit the amount of the

award, reduce it or deny compensation altogether. Where an award is to be limited or reduced due to contribution or other circumstances relating to the victim's behavior or action, said award shall not exceed \$12,500 in the aggregate.

(b) The Board may order the payment of compensation for expenses incurred as a result of the personal injury or death of the victim. These expenses must represent a pecuniary loss to the claimant as defined by N.J.S.A. 52:4B-1 et seq. and these rules consisting of, but not limited to, work and earnings loss, dependents' loss of support, other reasonable pecuniary loss incurred by claimant due to victim's death. The Board may also award payment for such allowable expenses which the Board determines to be reimbursable within these rules, such as reasonable charges for reasonably needed products and services, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.

1. The Board may order the payment of compensation for the loss of earning power as a result of the total or partial incapacity of the victim. Said loss includes work loss or loss of income the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he or she would have performed for income. In computing the earnings loss, the Board may consider any income received from substitute work actually performed by the claimant or any income that would have been earned through available appropriate substitute work he or she was capable of performing but unreasonably failed to undertake, and reduce the award, accordingly.

2. In computing the earnings loss of the victim/claimant or in the case of death, the loss of support of the claimant/dependent, the Board shall only consider the victim's earnings and/or the amount of money the decedent was contributing to the household at the time of the injury or death of the victim. Where the dependents of a decedent have received or are receiving a greater sum of money from other sources by reason of the decedent's death than the sum contributed to their support by the decedent at the time of death, no compensation for loss of support shall be awarded to the dependents. The Board, however, reserves the right to review its determination should the claimant's dependency, marital or earnings status be altered, and to modify its award accordingly.

i. Notwithstanding the date of the incident, for any application filed after April 6, 1992, the maximum reimbursement for loss of earnings shall not exceed a total of 104 weeks. For a victim who has been rendered permanently disabled as defined by 42 U.S.C. 1381 et seq., loss of earnings may be awarded for a period of 260 weeks (five years). In either case the victim shall enroll in a retraining or rehabilitation program or establish that the victim's disability prevents participation in such program or participation in gainful employment. Maximum reimbursement for loss of support in death claims shall not exceed that of 48 months.

(c) Every claimant making application to the Board for compensation is required to produce verification for and provide evidence of all losses and injuries claimed as compensable items in said application, and the Board shall consider solely those losses and injuries for which such verification and evidence is so produced.

(d) In making its award the Board shall make no allowance for pain and suffering.

(e) In claims involving the death of a victim, the maximum reimbursement for funeral expenses shall be as follows:

1. For incidents occurring before January 10, 1980, \$750.00;
2. For incidents occurring on or after January 10, 1980, \$2,000; and
3. For incidents occurring on or after June 7, 1993, \$3,000.

(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.

(g) For injuries resulting from incidents occurring on or after December 7, 1982, no compensation shall be awarded in an amount in excess of \$25,000. For incidents occurring on or prior to December 6, 1982, the maximum compensation shall not exceed \$10,000. These limitations shall remain in effect until statutory law provides otherwise.

1. For incidents occurring on or after June 26, 1995, any claim for compensation shall expire five years after the entry of an initial determination order. No further order is to be entered with regard to the claim except for requests for payment of specific out-of-pocket expenses received by the Board prior to the expiration of the five year period or for expenses for which the Board had notice or should reasonably have known existed prior to the expiration of the stated five year period.

(h) Unless otherwise provided for by N.J.S.A. 52:4B-1 et seq. and these rules, an award for compensation may be made whether or not any person is prosecuted or convicted for the crime giving rise to the claim before the Board.

(i) No passenger in a motor vehicle, vessel or commercial vehicle who knew or reasonably should have known that the driver was operating the vehicle or vessel while under the influence of alcohol or drugs is eligible for compensation.

1. In order for a victim to be eligible for compensation, it is not necessary that the offender is convicted of a violation under N.J.S.A. 39:4-50, 39:3-10.13 or 12:7-46 nor that a blood alcohol test be administered to the offender. However, the victim or claimant must demonstrate by a preponderance of the credible evidence that the incident involved driving a vehicle or operating a vessel while under the influence of alcohol or drugs.