
LAW AND PUBLIC SAFETY

(b)

DIVISION OF CRIMINAL JUSTICE

VICTIMS OF CRIME COMPENSATION OFFICE

Rules Relating to the Practice and Procedure before the New Jersey Victims of Crime Compensation Office

Adopted Repeals and New Rules: N.J.A.C. 13:75

Proposed: April 2, 2012 at 44 N.J.R. 962(a).

Adopted: June 12, 2012 by Victims of Crime Compensation Office,
Marsetta Lee, Executive Director.

Filed: June 12, 2012 as R.2012 d.133, **without change**.

Authority: N.J.S.A. 52:4B-1 et seq., specifically 52:4B-9.

Effective Date: July 16, 2012.

Expiration Date: July 16, 2019.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

The adopted repeals and new rules are in compliance with the standards or requirements imposed by Federal law set forth in 42 U.S.C. § 10602, therefore a Federal standards analysis is not required.

Full text of the adopted new rules follows:

CHAPTER 75

NEW JERSEY VICTIMS OF CRIME COMPENSATION OFFICE

SUBCHAPTER 1. GENERAL PROVISIONS

13:75-1.1 Scope of rules

This chapter shall constitute the practice to be followed in all proceedings before the Victims of Crime Compensation Office.

13:75-1.2 Liberal construction of provisions

This chapter shall be liberally construed by the Office to permit it to discharge its statutory function and secure equitable determinations in all matters before the Office.

13:75-1.3 Practice where rules do not govern

The Office 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 this chapter or by statute, the Office shall exercise its discretion as permitted by N.J.A.C. 13:75-1.2.

13:75-1.4 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise.

“Child” means an unmarried person who is under 18 years of age and includes a stepchild or an adopted child.

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

“Claimant” means the person applying for compensation, who may or may not also be the victim of the crime that forms the basis for the application for compensation.

“Decedent” means a person who is deceased.

“Dependents” means:

1. Such relatives of a deceased victim as were wholly or partially dependent upon the income of the decedent at the time of death and shall include the child of such victim born after his or her death; and

2. A victim who relied upon an offender for financial support.

“Direct victim” means the person who is injured or killed as a result of a crime.

“Domestic help” means those services to the victim or claimant that are not medically related. Domestic help includes those services that provide needed day-to-day living support for the victim or claimant because of injuries related to their victimization, including housecleaning, laundry tasks, cooking, and companionship and provide assistance so that the victim may take prescribed medicine and do simple therapeutic exercises.

“Family” means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, great-grandchild, brother, sister, half-brother, half-sister, or spouse’s parents.

“Homicide survivor” in cases of homicide, a secondary victim survivor shall be treated as a direct victim for purposes of counseling only.

“Office” means the Victims of Crime Compensation Office. The Office is located at 50 Park Place, 5th Floor, Newark, NJ 07102.

“Other sources” means any source of money, benefits, or advantages received or receivable by a claimant or victim, except that life insurance payments and private donations received by the dependents of the victim shall not be considered as other sources.

“Out-of-pocket expenses” means crime-related financial losses for which the victim or claimant is responsible and for which there are no other sources available to reimburse the losses.

“Person in close relationship” means 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; any person who is no longer living 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; 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 any other

person whom the Office deems, under all the circumstances of a particular case, to have had a close personal relationship with the direct victim.

“Personal injury” means actual bodily harm and includes pregnancy and mental or emotional trauma.

“Relative” of any person means his or her spouse, parent, grandparent, stepparent, child, grandchild, great-grandchild, brother, sister, half-brother, half-sister, or spouse’s parents.

“Restitution” means financial compensation for the injury, losses, or damages incurred as a result of the crime, which is ordered by the court at the time of the offender’s criminal sentencing. Restitution paid directly to a victim shall be considered an “other source” for purposes of determining the amount of compensation to be allowed on any claim.

“Review Board” or “Board” means the Victims of Crime Compensation Review Board established by N.J.S.A. 52:4B-3.2.

“Secondary victim” means any person who has sustained an injury or pecuniary loss as a direct result of a crime committed upon any member of the secondary victim’s family or upon any person in close relationship to such secondary victim.

“Victim” means a person who is injured or killed by any act or omission of any other person within the description of any of the offenses specified N.J.S.A. 52:4B-11.

“Victim’s representative” or “representative” means any person who represents or stands in the place of a victim or claimant for the purpose of filing an application for compensation with the Office, including, but not limited to, a spouse, parent, relative, guardian, dependent, heir, or executor.

13:75-1.5 Attorney representation

(a) Claimants have the right to be represented at all stages of the application process and at any review or appeal by the Review Board, 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.

(b) Every attorney providing representation to a claimant seeking compensation shall file a notice of appearance with the Office.

(c) If any claimant designates an attorney to represent him or her in connection with his or her dealings with the Office, and the attorney has executed and filed the appropriate notice, the notice shall remain in effect until:

1. The claimant files a written revocation of the attorney’s authorization;

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

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

4. The Office receives notice of the attorney’s death or disqualification.

(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 claimant shall be sent to such attorney in lieu of the claimant or, at the Office’s discretion, to both the claimant and his or her attorney. Service upon the attorney shall be service upon the claimant represented.

13:75-1.6 Requests for inspection or copies of records maintained by the Office

(a) The Office shall designate a custodian of all government records under the control of the agency in accordance with N.J.S.A. 47:1A-1 et seq. It shall be the responsibility of the custodian to see that all government records and statistical information related to claims is readily available for inspection, copying, or examination by citizens of this State.

(b) The files maintained by the Office that relate directly to the handling of any claim for compensation filed by a victim or claimant are not government records subject to disclosure under the Open Public Records Act and shall be considered confidential. Victim and claimant files and records shall not be open to inspection by any person unless authorized by law or court order.

13:75-1.7 Availability of forms and rules

The Office shall prepare and furnish, free of cost, and shall have available on request, such forms and rules as the Office determines necessary to fulfill its statutory function. Such forms shall include, but not be limited to, claim applications, catastrophic applications, medical report and earnings record authorizations, counseling services request, and subrogation agreements.

13:75-1.8 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.

13:75-1.9 Procedure to request Office action to promulgate, amend, or repeal rules

(a) Persons requesting action to promulgate, amend, or repeal any rule in this chapter shall comply with N.J.S.A. 52:14B-4(f) and any implementing rules as adopted by the Office of Administrative Law.

(b) Persons making a request under (a) above may obtain forms for petitioning this Office's rules from the Office.

(c) When considering the petition, the Office shall comply with timelines and procedures contained in N.J.S.A. 52:14B-4(f).

13:75-1.10 Time of decision

Any decision on a claim application shall be governed by the administrative rules and standards in effect at the time an application is filed, so that all decisions relating to the application are subject to the rules in effect at the time of application, except where otherwise specifically provided in State or Federal law.

SUBCHAPTER 2. ELIGIBILITY

13:75-2.1 Eligibility of claims

(a) The Office may order the payment of compensation for personal injury or death resulting from an attempt to prevent the commission of a crime or to arrest a suspected criminal or in aiding or attempting to aid a police officer in doing so.

(b) The Office may order the payment of compensation for personal injury or death resulting from the commission or attempt to commit any of the following offenses:

1. Aggravated assault;
2. Threats to do bodily harm;
3. Lewd, indecent, or obscene acts;
4. Indecent acts with children;
5. Kidnapping;
6. Murder;
7. Manslaughter;
8. Aggravated sexual assault;
9. Sexual assault;
10. Aggravated criminal sexual contact;
11. Criminal sexual contact;
12. Any other crime involving violence;
13. Domestic violence, pursuant to N.J.S.A. 2C:25-19;
14. Burglary;
15. Tampering with a cosmetic, drug, or food product;
16. Human trafficking pursuant to N.J.S.A. 2C:13-8;
17. Bias intimidation in accordance with N.J.S.A. 2C:16-1;
18. Criminal stalking pursuant to N.J.S.A. 2C:12-10;
19. Vehicular homicide;
20. Assault by auto; or
21. Eligibility of claims involving a motor vehicle, vessel, airplane, or commercial vehicle in which one or more of the following situations occurred:
 - i. The victim was injured in the commission of a violation of N.J.S.A. 39:4-50 (Driving while Intoxicated);
 - ii. The victim was injured in the commission of a violation of N.J.S.A. 39:3-10.13 (Operating a Commercial Vehicle while Intoxicated);
 - iii. The victim was injured in the commission of a violation of N.J.S.A. 12:7-46 (Penalties for Operating Vessel Under the Influence);
 - iv. Theft of an automobile pursuant to N.J.S.A. 2C:20-2.1;
 - v. Eluding a law enforcement officer pursuant to N.J.S.A. 2C:29-2b;

vi. Unlawful taking of a motor vehicle pursuant to N.J.S.A. 2C:20-10b, c, or d, where injuries to the victim occur in the course of operating an automobile in furtherance of the offense; or

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

(c) Where the operator of a motor vehicle, vessel, airplane, or commercial vehicle leaves the scene of an accident in violation of N.J.S.A. 39:4-129(a), and the circumstances surrounding the incident cannot be established by a preponderance of the credible evidence, it may be presumed that the victim was injured as a result of the operation of a motor vehicle, vessel, airplane, or commercial vehicle that was either unlawfully taken from its owner, used as a weapon in a deliberate attempt to run the victim down, or driven while under the influence of alcohol, a controlled dangerous substance, or in an attempt to elude a law enforcement officer.

(d) Eligible victims may also 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/or

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 in that foreign jurisdiction that has not fully compensated the victim or claimant for all out-of-pocket and unreimbursed and unreimbursable expenses, except that:

i. Where residents of the State are injured in a foreign state, said foreign state has primary jurisdiction, and the Office will not entertain a claim for compensation until the victim or claimant has fully exhausted all available procedures for victim's compensation in said foreign state.

(e) Where the victim of a crime has died as a direct result thereof, the Office may award compensation to the following persons:

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

2. Any relative of the deceased victim who was dependent upon the victim for support, or any person who has cohabitated with the victim/decendent 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 Office 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.

(f) Any claimant who is held by the Office 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.

(g) No award will be made if compensation to the victim or claimant proves to be substantial unjust enrichment to the offender.

1. Where the enrichment is inconsequential or minimal, compensation may not be denied nor reduced.

2. 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 claimant or victim;

ii. Whether the offender has access to any cash payments coming into the household on behalf of the claimant or victim;

iii. Whether the award is essential to the well-being of the claimant or victim and other innocent and dependent family members;

iv. The amount of living expenses paid by the offender before and during the dependency 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 claimant or victim;

vii. Collateral resources available from the offender, which resources include, but are not limited to, court-ordered restitution or support, and insurance and pension benefits. However, life insurance payments and

private donations received by the dependents of the victim shall not be considered as collateral resources.

(1) In evaluating collateral resources, the Office may consider whether the offender has a legal responsibility to pay, whether the offender has resources to pay, and whether payment is likely.

(2) The claimant or victim may 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 Office with information concerning medical insurance coverage and any other information necessary to make a determination.

(h) The Office may deny compensation to a claimant unless the claimant has satisfied any and all Violent Crimes Compensation Office assessments imposed pursuant to N.J.S.A. 2C:43-3.1 and restitution ordered by the courts to be paid specifically to the Office until such time as proper proof is submitted verifying satisfaction of said obligations.

(i) The Office will make no award for compensation to a victim or claimant, and may close the claim without prejudice, during any period of incarceration, if 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.

1. Except in the case of an otherwise eligible innocent child or incompetent victim, if the parent of guardian of such victim is subject to this provision, the parent or guardian shall file the claim on behalf of the minor as a victim's representative only and shall not be eligible for any independent benefit or compensation otherwise available to claimants. Limited compensation may be awarded for those expenses and services that will directly benefit the innocent child victim.

2. Upon release from any period of incarceration or submission to the Office of verification from the court that the bench warrant, criminal complaint, or indictment has been dismissed or otherwise disposed of, a victim or claimant may petition the Office to reopen the claim.

(j) No compensation shall be awarded if the victim sustained injuries while incarcerated for the conviction of a crime. Factors to be considered in determining incarceration shall include, but are not 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.

(k) If a victim is injured while serving a non-custodial sentence or while incarcerated for reasons other than conviction of a crime, the Office may consider an award of compensation and shall take all relevant matters into consideration including, but not limited to, the following:

1. The availability of funds as appropriated by the State in awarding compensation;

2. Whether the victim assumed a reasonable risk of injury under all the circumstances of the case;

3. Whether the victim had reason to believe that his or her actions would result in arrest, conviction, sentence, and incarceration;

4. The likelihood of the victim's conviction for the allegations serving as the basis for the victim's incarceration;

5. The nature of the offense and the sentence imposed; and

6. The disposition of the charges by the criminal justice system.

(l) Factors the Office may consider in denying a claimant's eligibility include, but are not limited to:

1. Provocation;

2. Consent;

3. Participation in an illegal activity or behavior on the part of the victim that directly or indirectly contributed to his or her injury or death;

4. The prior case history of the victim, including 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; and

5. Any other information that, based on the particular facts and circumstances of the application made known to the Office, warrants a finding of either eligibility or ineligibility for an award of compensation under this chapter.

(m) The Office may deny or reduce an award if it is determined that 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. Factors the Office may consider include, but are not limited to, the extent to which the deficiency contributed to the resulting injuries and victim's knowledge of the deficiency.

(n) An award for compensation may be made whether or not any person is prosecuted or convicted for the crime giving rise to the claim.

13:75-2.2 Impact of intoxication on eligibility

(a) No compensation shall be awarded to any 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 intoxicated or under the influence of alcohol or drugs.

1. "Under the influence" as used in this section means the substantial deterioration or diminution of mental faculties or physical capabilities of a person whether due to intoxicating liquor, narcotics, hallucinogenic, or habit-producing drugs, and/or other substance that leads to the substantial deterioration or diminution of mental faculties or physical capabilities of a person.

(b) A victim may be eligible for compensation even though the offender is not convicted of a violation under N.J.S.A. 39:4-50, 39:3-10.13, or 12:7-46, or a blood alcohol test was not 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.

(c) In any matter involving a violation of N.J.S.A. 39:4-50, 12:7-46, or 39:3-10.13, the following factors will be taken into account:

1. A blood alcohol reading of 0.08 percent is prima facie evidence of a violation of N.J.S.A. 39:4-50 or 12:7-46;

2. A blood alcohol reading in excess of 0.05 percent but less than 0.08 percent will not give rise to a 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 may give rise to the presumption that the offender was not under the influence of intoxicating liquor; and

4. A blood alcohol reading of 0.04 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.

13:75-2.3 Secondary victim eligibility

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

(b) In assessing the eligibility of secondary victims, the Office will be guided by N.J.S.A. 52:4B-10 and 18, N.J.A.C. 13:75-2.1, and any other factors deemed relevant based on the particular circumstances of the application.

13:75-2.4 Eligibility of claimants for personal injury resulting from the crime of burglary

(a) Pursuant to the provisions of N.J.S.A. 52:4B-11b(11), the Office 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" as used in this section, shall mean any residence, building, room, or any place adapted for overnight accommodation of a person. For purpose of this section, a motor vehicle is not to be considered 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 may be eligible for compensation under this section only if 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.

13:75-2.5 Investigation of claims

(a) All claimants must fully cooperate with investigators, agents, and/or representatives of the Office in order to be eligible for any award.

(b) All claimants shall advise the Office of any and all changes of address and residence to permit the Office to properly process the claim petition. In the event that such cooperation is refused or denied, the Office may, in its discretion, deny such claim.

13:75-2.6 Determinations, presumptions, and burdens of proof

(a) Any person filing an application for compensation has 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 Office may give substantial weight to conclusions of investigative law enforcement agencies and dispositions of criminal proceedings including, but not limited to, guilty pleas and jury verdicts, but, considered along with all other evidence, the ultimate determination made on any application is within the discretion of the Office.

SUBCHAPTER 3. FILING CLAIMS

13:75-3.1 Filing of claims

(a) All claim applications must be filed within three years after the date of the incident upon which the claim is based or, if after that date, upon determination by the Office that good cause exists for the delayed filing. Good cause includes, but is not limited to, instances where the victim or the victim's dependents were not appropriately informed of the benefits offered by the Office as required by law.

1. Good cause for a delay in filing may be found where:

i. The victim or claimant provides sufficient reasons, based on the totality of the circumstances, to demonstrate that his or her crime-induced incapacity prevented the timely filing of a claim; and

ii. The late filing of the application does not prejudice the ability of the Office to verify a victim/claimant's eligibility.

2. If the victim is under 18 years-of-age, the three-year limit on filing shall commence on the day the victim turns 18 years old.

3. In the case of child sexual abuse, defined as an act of sexual contact or sexual penetration between a child under the age of 18 and an adult, an application for compensation shall be filed within three years after reasonable discovery of the injury and its causal relationship to an act of child sexual abuse unless good cause is shown, in accordance with N.J.S.A. 2A:61B-1.

i. The totality of the circumstances that should be considered in assessing the reasonableness of the late filing of the victim's claim shall include: the victim's age at the time the sexual abuse occurred; any threats the wrongdoer may have made to the victim; the length of time that passed between the end of the abuse and the emergence of the claimed injury; the nature of the claimed injury; and the difficulty in discovering certain injuries.

ii. The burden of proof rests with the victim/claimant and may be established through presenting evidence including the submission of a report from a medical professional.

(b) The incident must have been reported to the police within nine months of its occurrence or the date from which the victim or claimant had knowledge or reason to believe that a crime had occurred. The Office reserves the right to, upon determination that good cause exists for the delayed filing, make an exception to the requirement that the incident be reported to the police within the stated time period.

1. Good cause for a delay in filing may be found where:

i. The victim or claimant provides sufficient reasons, based on the totality of the circumstances, to demonstrate that the incident could not be reported to the police within the time prescribed; and

ii. The late reporting of the incident to police does not prejudice the ability of the Office to verify a victim's or claimant's eligibility.

(c) All claims must be filed on official forms that include a signed authorization for securing medical and other necessary records and a subrogation or civil assignment of interest agreement. The official forms may be obtained by requesting them in person, by telephone, through the

mail at 50 Park Place, 5th floor, Newark, New Jersey 07102, or through the Office's official Internet website at <http://www.state.nj.us/victims>.

(d) If a claim is made by a minor, as defined under New Jersey law, the forms shall be signed by a victim's representative, parent, or guardian.

(e) If a claim is made by a person who is mentally incapacitated, the forms shall be signed by the victim's representative, the person's guardian, or such other individual who is authorized to administer his or her estate.

(f) At the time of filing the claim, the victim will be provided with any available referrals for counseling and other social services.

SUBCHAPTER 4. COMPENSATION BENEFITS

13:75-4.1 General provisions

(a) The Office may order the payment of compensation for expenses actually and reasonably incurred as a result of the personal injury or death of the victim.

1. Reimbursable expenses include those unreimbursed and unreimbursable out-of-pocket expenses or indebtedness for medical care or other necessary services, loss of earnings, loss of support, pecuniary loss to the dependents of deceased victims, and other reasonable pecuniary loss resulting from the personal injury or death of the victim.

(b) Subject to the availability of funds, the Office may award payment for such allowable expenses that the Office determines to be reimbursable within the scope of this chapter, such as charges for reasonably needed products and services, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.

(c) Where the Office determines that, because of the victim's conduct, the victim contributed to the infliction of his or her injury, the Office may limit the amount of the award, reduce it, or deny compensation altogether.

1. 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.

(d) Every victim or claimant seeking compensation from the Office shall produce verification and provide evidence of all losses and injuries claimed as compensable items in his or her application. Only those losses and injuries for which verification and evidence is produced shall be considered for compensation.

(e) In making its award, the Office shall make no allowance for pain and suffering.

(f) Except as otherwise permitted by this chapter, no compensation shall be awarded for loss of personal property or property damage.

(g) Except for cases determined to be catastrophic in nature, no compensation shall be awarded in an amount in excess of \$25,000.

1. The Office may, within its discretion, prioritize and attempt to compromise the various items of payment for any claim in the event it determines that the maximum amount of \$25,000 payable is likely to be reached.

2. The maximum award of \$25,000 shall remain in effect until statutory law provides otherwise.

(h) Ten years after the entry of an initial determination order, which shall not include administrative closures, a claim for compensation expires and no further order is to be entered with regard to the claim, except:

1. For requests for payment of specific out-of-pocket expenses received by the Office prior to the expiration of the 10-year period;

2. In those cases determined by the Office to be catastrophic in nature; and

3. For requests for payments of expenses that were incurred only after the expiration of the 10-year period.

13:75-4.2 Manner of payments

(a) Payments shall, at the discretion of the Office, be made in either a lump-sum amount or in periodic payments.

(b) Where periodic payments are authorized, the Office shall verify the dependency, financial status, and/or disability status of the claimant or victim at least every three months. Upon discovering a change in circumstances, by marriage, financial status, dependency, disability

status, or otherwise, the Office shall adjust the award and payments, if warranted.

13:75-4.3 Compensation available to secondary victims

(a) Except as provided in N.J.A.C. 13:75-2.4, secondary victims need not be present during the actual commission of a crime.

(b) A secondary victim cannot be eligible if the direct victim is not eligible.

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

(d) In cases of homicide, a secondary victim (survivor) shall be treated as a direct victim for purposes of counseling only.

(e) If, as a direct result of the homicide, the surviving spouse or cohabitant of the decedent was required to leave their position of employment or secure a position with a lesser salary, loss of earnings may be awarded to the surviving spouse or cohabitant.

1. Loss of earnings may be paid to members of the victim’s family for funeral attendance and/or bereavement period of no more than two weeks.

2. Loss of earnings may be awarded to the secondary victim where the loss is solely related to the care of the direct victim during the direct victim’s period of disability.

3. The maximum reimbursement for loss of earnings shall not exceed a total of 104 weeks or \$7,000, whichever is met first.

13:75-4.4 Medical and counseling fees

(a) Except as permitted by N.J.S.A. 45:14B-6, the Office shall only pay for those medical, mental health, counseling, or other services provided by a licensed practitioner. The Office will pay out-of-pocket unreimbursable counseling and therapy expenses for each of the listed categories 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
- 8. Group counseling sessions, involving three or more individuals conducted by any of the credentialed providers in (a)1-7 above \$50.00 per eligible claimant per session

(b) Except for cases determined to be catastrophic in nature, the maximum award for unreimbursed and unreimbursable counseling expenses shall be \$12,500, notwithstanding the number of counseling sessions attended.

(c) A medical, mental health, counseling, or other provider who accepts payment from the Office shall accept the Office’s rate as the maximum allowable payment for that service and shall not seek or accept further payment from any other source if the total of payments accepted would exceed the maximum rate set by the Office for that service.

13:75-4.5 Loss of earnings from victim; loss of support from decedent

(a) The Office may order the payment of compensation for a victim or claimant’s 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 or she had not been injured, and expenses reasonably incurred by him or her in obtaining services in lieu of those he or she would have performed for income.

1. In computing the earnings loss, the Office may consider any income received from substitute work actually performed by the victim or 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.

(b) In computing the amount of any loss of earnings or support, the Office shall only consider the earnings and/or support actually contributed to the household at the time of the injury or death of the victim.

(c) Where the dependents of a deceased victim have received or are receiving a greater sum of money from other sources by reason of the victim’s death than the sum contributed to their support by the victim at the time of death, no compensation for loss of support shall be awarded to the dependents. The Office, 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.

(d) The maximum reimbursement for loss of earnings shall not exceed a total of 104 weeks, unless a victim has been rendered permanently disabled as defined by 42 U.S.C. §§ 1381 et seq., in which case loss of earnings may be awarded for a total period of 260 weeks (five years).

(e) The maximum reimbursement for loss of support in death claims shall not exceed 48 months.

(f) Loss of earnings may be paid to the victim for court attendance. Loss of earnings may also be paid for court attendance for the victim’s immediate family but shall be subject to the limitations applicable to secondary victims.

(g) The weekly maximum reimbursement for loss of earnings or support shall not exceed \$600.00.

13:75-4.6 Loss of support from offender

(a) The Office may award compensation for loss of support to any victim or claimant who can establish by a preponderance of the evidence that, at the time of the incident, a dependency existed upon the income or other economic contributions of the offender that is no longer available to or accessible by the victim.

1. In computing the loss of support of the victim or claimant/dependent, the Office may only consider the assailant/offender’s earnings and/or the amount of money or economic contributions the offender was actually contributing to the victim and victim’s household at the time of the injury of the victim.

2. Where the dependents have received or are receiving a greater sum of money from other sources by reason of the incident giving rise to the claim for compensation than the sum contributed to their support by the assailant/offender at the time of incident, no compensation for loss of support shall be awarded to the dependents.

3. The Office reserves the right to review its determination should the victim’s dependency, marital, or earning status be altered, and to modify its award accordingly.

(b) Where a dependency upon the assailant/offender has been established, loss of support may be compensated only:

- 1. For a period not to exceed 48 months;
- 2. During a period of incarceration of the offender for a minimum period of at least two weeks;
- 3. Where the assailant/offender is deceased or remains a fugitive from prosecution and/or his or her whereabouts remain unknown for a minimum period of at least two weeks;
- 4. Where the assailant/offender has ceased providing support to the victim, in total or in part, due to the incident giving rise to the claim for a minimum period of at least two weeks;

5. Where compensation paid to the victim does not result in a substantial unjust enrichment to the assailant/offender;

6. Where compensation paid to the victim does not relieve the assailant/offender from any monetary obligation imposed by the court or other legal document, prior to, as a direct result of or subsequent to the incident giving rise to the claim for compensation, as the assailant/offender’s legal duty toward the victim, the victim’s family, or a member of the assailant/offender’s family;

7. Where the victim and/or claimant cooperates in the prosecution of the offender, including the filing and prosecution of a criminal complaint against the offender, unless a compelling health or safety reason is shown for a failure to so cooperate; and

8. Where the victim has been determined to be eligible for compensation under N.J.S.A. 52:4B-1 et seq. and this chapter.

(c) A victim and/or claimant shall not be eligible to receive compensation for loss of support for more than two separate incidents

involving the same assailant/offender, nor receive more than one such award within a period of 12 consecutive months.

(d) The victim and/or claimant shall inform the Office whether the assailant/offender continues, or commences again, to provide support, in total or in part, in any form, to the victim and/or family and whether the assailant/offender resides with the victim at any time subsequent to the incident giving rise to the claim for compensation. Failure to provide the Office with said information shall be a basis for denial or cessation of the payment of compensation and good cause for the Office to seek reimbursement for any award paid in the claim.

(e) In cases where the offender has failed to meet his or her financial obligation, the Office may in its discretion, in order to prevent undue hardship, award compensation on behalf of the victim. The Office does, however, retain the authority to seek reimbursement from the offender for the amount paid.

13:75-4.7 Relocation

(a) The Office may award compensation for expenses incurred as a result of the relocation of a victim and his or her family, due to the incident forming the basis of the victim's claim where the Office 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.

(b) In determining the need, the Office may take into consideration:

1. The nature of the crime;
2. 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;
3. The degree of injury the victim sustained;
4. The criminal case history of the offender and the offender's record while incarcerated;
5. Prior acts of the offender;
6. The efforts the victim and/or his or her family have undertaken in order to protect themselves from further harm;
7. The offender's sentence and period of incarceration, whether for the crime forming the basis of the claim filed with the Office or through a plea bargain on related or unrelated charges;
8. The emotional, psychological, and physical impact on the victim and/or his or her family which may result through a failure to relocate; and
9. Any other relevant factors.

(c) 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.

(d) Maximum reimbursement for moving expenses shall be \$2,500.

1. Related moving expenses may include truck rental, security deposit, temporary shelter, personal expense items of the claimant that the Office deems to be reasonable and necessary under the circumstances, moving services, monthly rental and mortgage cost differential, first month's rent, one month's rent if the relocation occurred within one year of filing of the application, and, subject to any limitations set forth in this chapter, 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.

2. In the event a security deposit is paid in connection with a relocation, the landlord, leasing company, or other entity shall be advised that the Office is entitled, pursuant to N.J.S.A. 46:8-21.1, to the return of the deposit on termination of the contract, lease, or agreement.

i. Within 30 days after termination of the contract, lease, or agreement, the net amount of the security deposit, including any interest accumulated, less any charges expended in accordance with the terms of the contract, lease, or agreement, shall be returned to the Office by personal delivery or registered or certified mail.

(e) A victim or claimant may only seek compensation for moving expenses once for each claim filed with the Office.

(f) This section 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 or her 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 or a county prosecutor's office attesting to same.

(g) Due to the emergent need of relocation funds in many situations, any time consuming documentation proof requirements may be lessened at the Office's discretion.

13:75-4.8 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, calculated at the rate of .31 cents per mile up to the daily maximum allowance.

1. Covered transportation expenses include, but are not be limited to, visits to treating physicians, health care facilities, and substitute travel costs other than ambulance or ambulatory mobile care services secondary to securing medically related services incurred due to a criminally-induced physical incapacity for which an eligible claim has been filed with the Office. All non-medically related transportation costs are excluded other than attendance at court proceedings for purposes of prosecuting the alleged offender.

(b) Necessary and reasonable transportation expenses, such as railroad and airfare, which are a direct result of the incident, incidental to treating and caring for the victim, or for attendance at a victim's funeral, may be reimbursed to claimant or to victim's relatives at a maximum of \$200.00 per person, up to a total amount of \$1,000.

13:75-4.9 Funeral expenses

In claims involving the death of a victim, the maximum reimbursement for funeral expenses shall be \$5,000.

13:75-4.10 Attorney fees

(a) The Office may, as part of any order for payment, determine and allow reasonable attorney fees and costs, which shall not exceed 15 percent of the amount awarded as compensation, to an attorney representing an applicant in seeking compensation from the Office.

1. The attorney fee award for representation of an applicant in seeking compensation from the Office shall be paid in addition to the compensation to the claimant and shall not be included in calculating the maximum benefit available to a claimant.

2. Any attorney fee award made pursuant to (b) below shall not be included in calculating the attorney fee payable under this section.

3. No attorney fee award for representing a claimant or victim in an appeal involving his or her application for compensation from the Office shall be less than \$300.00, unless the Office determines that the attorney has not acted diligently or in good faith representing the claimant or victim.

4. Where the Office enters an order denying compensation, it may nevertheless allow an award of attorney's fees of \$300.00, if the Office determines that the attorney acted diligently and in good faith in representing the claimant or victim.

(b) The Office may allow payment of an attorney fee, up to a maximum of \$1,000, to an attorney who provides legal assistance to a victim in any legal matter, other than a decision of the Office, arising from or related to having been the victim of the offense that forms the basis of the victim's or claimant's application for compensation.

1. Payment of this other legal assistance fee may be made if and only to the extent that the amount of such payment does not, when combined with the amounts paid or payable to the victim under an order for compensation, exceed the \$25,000 limitation on compensation.

(c) Attorney fee awards made pursuant to (a) or (b) above shall be paid at the rate of \$125.00 per hour.

1. Every application for an award of attorney fees shall be accompanied by an affidavit of service from the attorney, which shall include a detailed hourly accounting of work completed by the attorney.

2. Where an attorney is seeking a fee award pursuant to both (a) and (b) above, separate affidavits of service shall be filed specifically identifying the work performed for each category for which payment is sought.

(d) All records of public agencies that are necessary to the investigation of a claim shall, whenever possible, be obtained by the Office. Therefore, no payment shall be made to an attorney for obtaining

such reports unless the Office had made a specific request of the claimant and/or of his or her attorney for such reports.

13:75-4.11 Domestic help, child care, day care, and home health care services

(a) The reimbursement for expenses arising out of providing child care and/or day care for a minor child or for an adult who may or may not be the victims of the crime alleged in the claimant's application, but who, nevertheless, is in need of such services and/or assistance as a direct result of the crime giving rise to the application, shall be set by the Office.

1. The Office shall make a case-by-case determination as to a reasonable period of time for the provision of child care and/or day care services. Such determinations shall be based on a totality of the circumstances.

2. Except for cases determined to be catastrophic in nature, reimbursement for child care and/or day care services shall not exceed \$6,500 in the aggregate.

3. Day care expenses for dependent children shall be reimbursed solely for those children who are 14 years old or less.

(b) The reimbursement for expenses arising out of hiring domestic help as a direct result of the crime giving rise to the application shall be set by the Office.

1. The Office shall make a determination in each case as to a reasonable period of time for the employment of domestic help. Such determinations shall be based on a totality of the circumstances.

2. Except for cases determined to be catastrophic in nature, the total amount of reimbursement for domestic help shall not exceed \$6,500 in the aggregate.

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

(d) Verification shall be provided by the claimant or victim that child care or day care services are related to the crime that formed the basis for the application and/or the recovery period in question.

(e) Home and institutional care services provided by licensed professionals involving both domestic assistance and advanced medical care and treatment are not covered by any award limits set forth in this section.

13:75-4.12 Crime scene clean-up

(a) The Office shall award compensation for the reasonable and necessary costs for cleaning a crime scene where criminally injurious conduct occurred, which costs have become the financial responsibility of the victim or claimant, and which are not reimbursed or reimbursable from any other source. For purposes of this section only a "claimant" includes a Good Samaritan who assists a victim during the immediate aftermath of the crime.

(b) Cleaning a crime scene means to remove, or attempt to remove, blood, dirt, stains, or debris from the crime scene by hauling and/or dumping, as a result of the crime or the processing of the crime scene. The reasonable out-of-pocket costs of cleaning supplies, equipment rental, and labor to clean the crime scene are also included.

(c) Compensation for crime scene clean-up shall be awarded for the victim's or claimant's personal residence and/or personal vehicle, leased or otherwise, where the criminal conduct and its resulting damage occurred. Places of employment or public access are excluded unless the victim or claimant has become financially responsible for the clean-up costs.

(d) Compensation awarded for crime scene clean-up costs shall not include replacement and/or repair expenses for personal property, other than as follows:

1. The Office may award compensation for the reasonable replacement value of bedding and clothing;

2. The Office may award compensation for the reasonable replacement value of furniture that has been rendered damaged or useless as result of the crime or the collection of evidence for purposes of investigating the crime; and

3. The Office may award compensation for the reasonable replacement value of carpeting, doors, windows, and locks.

(e) Compensation for crime scene clean-up shall be awarded solely through an eligible claim for compensation filed with the Office by, or on behalf of, a direct victim of a crime who has suffered an injury or death. Claims seeking only reimbursement for crime scene clean-up shall not be eligible for an award of compensation, but may be merged with and compensated through a crime-related eligible claim.

(f) An award of compensation for crime scene clean-up shall not exceed \$4,000 in the aggregate.

13:75-4.13 Service animals

(a) Where a criminal act has caused injury or death to a service animal trained and certified for the specific purpose of assisting an individual who is disabled or who requires the service of such an animal to perform day-to-day routine functions, the injured animal's crime-related medical treatment and replacement cost are compensable up to a maximum of \$5,000.

(b) Funeral expenses for a service animal shall not be compensated by the Office.

(c) Counseling to the service animal's owner shall be limited to a maximum of 15 sessions.

SUBCHAPTER 5. EMERGENCY AWARDS

13:75-5.1 Financial hardship

(a) The Office may grant an emergency award where such grants could help prevent financial hardship or stress that might not otherwise arise, forcing persons, among other things, to go on public assistance 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 him- or herself or his or her dependents.

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

(b) The claimant has the burden of showing the need for such emergency awards by the preponderance of the credible evidence. The Office shall make its determination based on a totality of the circumstances and in consideration of all relevant information made available.

(c) The maximum amount of any emergency award shall not exceed \$5,000.

(d) Any emergency awards made to a claimant shall be deducted from the final amount of compensation awarded except in de minimus emergency awards, which shall not exceed \$200.00. De minimus awards may be awarded for transportation, food, shelter, and any other exigent circumstances.

(e) Where the final amount is less than the sum of the emergency awards provided, or where the Office determines that an applicant shall receive no compensation, the Office may require that the claimant return an amount of money equal to the difference or repay the full amount of the award.

13:75-5.2 Stolen funds

(a) The Office may make an emergency award in an amount not to exceed \$200.00 for compensation for funds stolen directly from the person of the victim, whether or not the victim suffered any personal injury, except in the case of a burglary, wherein no such award shall be made.

(b) Eligibility for an emergency award under the section is limited to those meeting the following conditions:

1. The victim is over 60 years of age or disabled as defined pursuant to the Federal Social Security Act, 42 U.S.C. § 416(i);

2. The victim's income in excess of Social Security benefits does not exceed the limits adopted by the Department of Human Services as the standard of need for the General Assistance program;

3. The funds stolen exceed \$50.00;

4. The victim has filed a police report indicating the amount of money stolen;

5. The victim has cooperated with investigative and prosecutorial authorities;

6. The victim has identified the source of the funds stolen;

7. The Office is satisfied that there are no other sources available to provide the victim with funds necessary to cover immediate costs of essential shelter, food, or medical expenses; and

8. The victim is the innocent victim of any one offense enumerated in N.J.S.A. 52:4B-11, except burglary.

(c) A victim shall not receive an emergency award pursuant to this section for more than two separate incidents of crime victimization, nor receive more than one such award within a period of 36 consecutive months.

(d) Any such emergency award made shall be included in the final amount of compensation within the statutory maximum as set forth in this chapter.

SUBCHAPTER 6. CATASTROPHIC CLAIMS

13:75-6.1 General provisions

(a) 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 offense that formed the basis of the application for compensation.

(b) The Office may make one or more supplemental awards for the purpose of providing rehabilitative assistance and services to catastrophically injured crime victims determined eligible for compensation within provisions set by this section, notwithstanding the fact that said payments may, in the aggregate, exceed the statutory maximum award as provided in this chapter. There is no time limit to file a catastrophic application.

(c) Compensation under this section may be awarded in lump sum or periodic payments; however, any compensation awarded shall not exceed the actual cost of the rehabilitative services allowed in this section.

(d) Compensation under this section shall be awarded solely for rehabilitative services, which are those services restorative in nature commensurate with the medical needs of the victim and prescribed by a licensed provider to correct or substantially modify a crime-related physical or mental condition that has resulted in a significant impediment to the victim's ability to interact with others and carry on his or her normal life functions.

1. The rehabilitative service must be reasonably expected to eliminate or reduce such impediment and to promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives.

2. Expenses incurred in an emergency room or medical facility where remedial, acute, and recuperative care is required immediately or shortly after the crime victimization forming the basis of a claim for compensation, unless shown to be a rehabilitative service as defined in this section, are excluded from supplemental catastrophic compensation even though the victim may have been determined to be a catastrophically injured crime victim.

(e) A denial of an application for compensation made pursuant to this section shall not be subject to appeal.

(f) The burden of proof is upon the victim and/or claimant to establish, by a preponderance of the credible evidence, eligibility for compensation as a catastrophically injured crime victim.

1. Speculation and conjecture as to a potential increase in disability, mere loss of earnings, cumulative injuries minor in nature, and, among other things, subjective statements of the victim without a demonstration of catastrophic injury by way of objective medical evidence and professional medical analysis is not sufficient to meet the burden of proof.

(g) The Office 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.

13:75-6.2 Eligibility determinations

(a) Eligibility for supplemental compensation for catastrophic injuries shall be based on the totality of the circumstances and in consideration of each of the following factors:

1. Whether the victim has suffered a significant and sustained reduction in his or her mental and physical functioning such that his or

her ability to interact with others and carry on the normal functions of life has been dramatically altered;

2. Whether the victim's ability to work has been diminished to a material degree;

3. Whether the victim has been diagnosed with a physical or neuro-physical impairment and no fundamental or marked improvement in his or her crime-related condition can be reasonably expected;

4. 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, or amputation of a major portion of an extremity;

5. Whether the injury has been diagnosed as permanent or long-term; and

6. Whether an extreme medical risk exists that has substantially increased functional impairment or risk of death if the medical services are not provided expeditiously.

(b) Where a victim is has been determined permanently disabled and is receiving benefits pursuant to 42 U.S.C. §§ 1381 et seq., as a result of a crime that forms the basis for the application for compensation, there shall be a presumption that the victim is a catastrophically injured crime victim.

1. Proof of eligibility under this section requires that the victim submit a copy of the permanent disability determination issued by the Social Security Administration and supportive medical documentation.

(c) Secondary victims as defined by this chapter are not eligible for supplemental catastrophic crime victim compensation.

13:75-6.3 Compensation benefits

(a) Subject to the individual monetary caps established by the Office in this chapter, compensation awarded to catastrophically injured crime victims shall not exceed a supplemental amount of \$35,000 in out-of-pocket aggregate expenses.

1. The award of compensation for catastrophic injury related services shall be entered by the Office 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.

(b) The benefits and services listed in this section shall be compensated solely for the benefit of catastrophically injured crime victims.

(c) Compensation may be awarded to catastrophically injured crime victims where it is determined that the rehabilitative services are reasonable and medically necessary as evidenced by written prescription for the service issued by a licensed provider of medical services.

(d) 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 are excluded.

(e) 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, including chiropractic services;

3. Prescription and over-the-counter drugs and medical supplies that are physician-authorized and Federal Drug Administration-approved for injury or incapacity related to the crime that formed the basis for the victim's application for compensation;

4. Cognitive and psychological therapy;

5. Home health assistance;

6. Vehicle modifications upon submission of a medical prescription or other medical proof indicating the need for such modifications.

i. 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.

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

iii. 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 Office 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.

i. Modifications to vacation and secondary homes are excluded unless the victim/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 Office had previously awarded compensation under this section has been sold to a party other than a member of the victim/claimant's family, and that the original primary residence is no longer available for the use of the victim/claimant or his or her family.

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

iii. The vendor and the victim/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.

iv. The maximum compensation for a structure where modifications are made to a building not owned by a victim shall not exceed \$15,000;

10. Subject to medical prescription, as needed dependent care and domestic help as set forth in this chapter;

11. Speech therapy;

12. Subject to the review and approval of the Office, experimental medical treatment/experimental drugs that have been 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 this section, telecommunications, sensory, and other technological aids and devices and interpreter services.

(f) Every claimant seeking 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 Office shall consider only those expenses and injuries for which such verification and evidence has been produced. Verification must be provided that the services for which compensation is sought are related to the date of the incident and/or the recovery period in question.

1. The victim or claimant may seek prior approval from the Office for the services for which he or she intends to seek compensation.

2. The Office'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 may have been granted, compensation shall only be awarded upon notice from the claimant that the service for which compensation is sought has been completed.

(g) The Office shall annually set aside an amount of funds it determines to be reasonable for the purposes of compensation of catastrophic claims out of the 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. Additional funds may be set aside, as the Office determines reasonable and necessary.

SUBCHAPTER 7. HEARING PROCEDURES

13:75-7.1 Request for hearings

(a) After investigation of a claim has been completed, the victim/claimant shall be informed of the Office's decision in the matter and of his or her right to request a hearing before the Review Board by giving written notice to the Office within 45 days of receipt of the decision.

(b) If the victim/claimant fails to file a written notice within 45 days, and cannot demonstrate good cause for failure to do so, the appeal may be dismissed by the Review Board with prejudice.

(c) In any case where the victim is a minor or otherwise incompetent, appeals may be prosecuted on his or her behalf by the same persons authorized to file claims under N.J.A.C. 13:75-3.1(c) and (d).

(d) Claimants may appeal any claim denied because the Office deemed the claim ineligible or, except as provided in (e) below, any denial of compensation in a claim otherwise deemed eligible.

(e) Claimants may not appeal any claim involving a decision by the Office to deny catastrophic injury benefits, or a decision involving compensation in a case where the Office has compromised with service providers.

(f) The Review Board, at its discretion, may decide an appeal on the papers submitted and not hold a formal hearing.

13:75-7.2 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, not less than 15 days before the date of hearing.

(b) Hearings shall be held at a time and place designated by the Review Board. The entire Review Board, or any member thereof, may conduct the hearing.

(c) The victim/claimant has the right to be present at the hearing but may be excused at his or her request.

(d) The victim/claimant shall be allowed to present testimony or cross-examine witnesses personally or by counsel.

(e) Any person having a substantial interest in a proceeding may appear, produce evidence, and cross-examine witnesses personally or by counsel.

(f) All hearings shall be conducted in an orderly manner so as to ascertain the rights of all parties.

(g) All witnesses shall testify under oath and a record of the proceedings shall be made. Any Review Board member may administer oaths and/or affirmations and may question the claimant and witnesses.

(h) 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.

(i) The victim/claimant shall have the burden of proof, which shall be established by a preponderance of the credible evidence.

(j) The Review 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 this chapter. Any statement, document, or information necessary to afford the parties a fair hearing may be received as evidence, including 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.

(k) The Review Board may require a medical examination of the victim/claimant by a physician selected from a panel of impartial medical experts. The victim/claimant shall present him- or herself to the physician selected at the time and place designated. A written report of such examination shall be filed with the Review Board by the examining physician and a copy mailed by the Review Board to the victim/claimant or attorney. The examination fee shall be paid by the Office.

(l) Hearings shall be open to the public except that the Review Board may, in its discretion, hold private hearings in accordance with applicable legal requirements in the following circumstances:

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 Review Board determines that, in the event of a public hearing, one or more of the parties will be subjected to public ridicule or personal mental anguish or embarrassment; and

6. In any instance where the Review Board determines, based on the totality of the circumstances, it is in the best interests of the victim/claimant that the hearing not be open to the public.

(m) Upon application of the victim/claimant or attorney, submitted in affidavit or motion form, a case may be reopened for further investigation, and, if the Review Board finds it necessary, for further testimony. In determining whether to reopen a case, the Review Board will consider the following factors, whether:

1. The information submitted in support of the request to reopen was available at the time of the original appeal; and

2. The victim/claimant should reasonably have been aware of this information at the time of the original appeal.

(n) Approval of a motion to reopen proceedings shall not be deemed a matter of right but rather a matter within the Review Board's discretion. The Review Board may, on its own motion, reopen or reinvestigate cases at any times it deems necessary.

13:75-7.3 Subpoenas

(a) The Review 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-day provision may be waived at the discretion of the Review Board.

(b) The victim/claimant may file an application for the issuance of a subpoena and the Board may issue the same upon a showing of necessity that the evidence sought constitutes an element of the claim. A claimant's application for subpoena shall be in writing, designating the names and addresses of witnesses, and/or a description of the documents, books, records, correspondence, papers, or any other evidence sought to be produced along with the location of those documents, books, records, correspondence, papers, or any other records necessary to the claim being heard.

(c) Where a subpoena is issued, service and witness mileage fees shall be paid by the Office. The mileage fee shall be the prevailing rate on the date of the appearance as established by the Department of the Treasury.

(d) The Review Board, at its own instance or on application in writing of the victim/claimant, shall take or cause to be taken affidavits or depositions of witnesses residing within or without the State, whenever, in its sole discretion, it deems such procedures necessary. The Review 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 Review Board enters an Order of Payment, the Office may consider said expense as a reasonable expense incurred for reimbursement purposes.

13:75-7.4 Decisions by the Review Board

(a) In order to be eligible for review by the Review Board, all evidence must have been filed with the Review Board. If the procedure listed in this subchapter is not followed, the Review Board may, in its discretion, delay its decision or a previously scheduled hearing until such time as the evidence to be considered by the Review Board is properly filed. All evidence must be filed at least 10 days prior to the scheduled hearing.

(b) The Review Board shall render its decision within three months of receipt of all information necessary to render a final decision in the matter.

13:75-7.5 Judicial review

Appeals from the Review 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.

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. RECOVERY

13:75-9.1 Moneys received from other sources

(a) In determining the amount of compensation to be awarded, the Office shall take into consideration amounts received or receivable from other sources by the victim, claimant, and/or his or her dependents as a result of the offense or occurrence giving rise to the application.

(b) Other sources, as used in this section, means any source of benefits or advantages that the claimant has received in lieu of economic loss or that is readily available to the claimant from, including, 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. Workers' Compensation;

6. Wage continuation programs of any employer;

7. Proceeds of a contract of insurance payable to the victim or claimant for any loss sustained because of the criminally injurious conduct; except that life insurance payments and private donations received by the dependents of the victim shall not be considered as other sources;

8. A contract providing prepaid hospital and other health care services or benefits for disability;

9. The net amount received by the victim or claimant in excess of \$1,000 in any civil suit for damages;

10. All proceeds or recovery to any victim or claimant from any collateral action or claim based upon or arising out of the circumstances giving rise to victim/claimant's application for compensation; or

11. Restitution ordered to be paid directly to any victim or claimant as a result of the crime that formed the basis for the application for compensation.

(c) If any victim or claimant receives monies from any other source, he or she shall be required to repay the Office for any compensation previously awarded and shall contact the Office immediately upon receipt of any such monies from other sources.

1. If the victim or claimant receives monies from any other sources, the Office shall seek recovery only as to the net proceeds that are in excess of \$1,000.

13:75-9.2 Restitution

(a) If any victim or claimant is awarded restitution by a court in any criminal proceedings related to the crime that formed the basis of the application for compensation, the Office shall have the right to seek transfer of the restitution awarded to any victim or claimant from the Division of Parole, any county probation department, the Juvenile Justice Commission, and/or the Department of Corrections, up to the amount awarded as compensation.

1. Every victim and/or claimant seeking compensation from the Office shall provide written authorization permitting the Office to request the transfer of any court-ordered restitution payable to the victim and/or claimant to the Office, up to the amount awarded as compensation.

i. If the Office seeks the transfer of any court-ordered restitution payable to the victim and/or claimant, the Office shall provide written notice of such request to the court, the victim, claimant, and/or his or her representative, and the department, office, or agency responsible for collecting the court-ordered restitution from the offender.

(b) The Office shall notify the court immediately upon processing an application for compensation to advise the court of the Office's right to an award of restitution from an offender in accordance with N.J.S.A. 2C:44-2c(2).

1. If it is determined that an offender has already been sentenced by the court, the Office may, in its discretion, seek to re-open the judgment in order to obtain an order for restitution in the amount awarded as compensation.

13:75-9.3 Subrogation/civil action recovery

(a) If any victim or claimant institutes any civil law suit or other action as a result of the incident giving rise to his or her application for compensation, the Office shall be given written notification of any such action. After receiving notice of a civil or other collateral action, the Office may, in its discretion:

1. Join in the action as a party plaintiff to recover the compensation it has awarded;

2. Reserve its rights until such time as the action has been completed; or

3. Upon resolution adopted by the Review Board, waive its rights under this section.

(b) The Office shall be entitled to be directly reimbursed for two-thirds of the amount awarded as compensation to the victim or claimant from the proceeds of any judgment or settlement of any civil or other collateral action.

(c) If a victim or claimant brings a civil or other collateral action and recovers monies that the Office seeks as reimbursement for compensation awarded to the victim/claimant, the victim/claimant may deduct a pro rata share of the victim/claimant's attorney fees from compensation recovered.

(d) If the Office, at its own discretion, commences an action against the person or persons responsible for the victim's injuries to recover monies compensated to a victim or claimant, the victim/claimant shall cooperate fully with the Office in pursuit of its action including, but not limited to, joining as a party to said action.

(e) The Office may consider proceeds from a judgment, verdict, settlement, adjudication, any other resolution to a civil or collateral action, or other claim that purports to indicate, define, or specify that the proceeds, damages, or any other legal or economic loss classification or remedy, represents an item of loss not compensated by the Office, such as pain and suffering and property damage, as proceeds in defining money received from other sources.

(a)

**OFFICE OF THE ATTORNEY GENERAL
DIVISION OF GAMING ENFORCEMENT
Gaming Equipment
Rules of the Games
Mississippi Stud; Three-Card Bonus Wager
Temporary Adoption of Amendments: N.J.A.C.
13:69E-1.13X; and 13:69F-35.1, 35.5, 35.6, 35.10,
and 35.11**

Authority: N.J.S.A. 5:12-5, 69.a and e, 70.f, 99.a, and 100.

Take notice that the Division of Gaming Enforcement shall, pursuant to N.J.S.A. 5:12-69.e, conduct an experiment for the purpose of determining whether amendments to implement the "three-card bonus wager," a supplemental wager for the authorized game of Mississippi stud, are suitable for casino use.

The experiment will be conducted in accordance with temporary rules, which shall be available in each casino participating in the experiment, and shall also be available from the Division upon request.

The test would allow a casino licensee which wishes to participate in the experiment, and which meets all the terms and conditions established by the Division, to implement the amendments to the wager in its casino.

This experiment could begin on or after July 23, 2012, and continue for a maximum of 270 days from that date, unless otherwise terminated by the Division or any of the participating casino licensees prior to that time, pursuant to the terms and conditions of the experiment.

Should the temporary amendments prove successful, in the judgment of the Division, the Division will propose them for final adoption, in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

(b)

**DIVISION OF GAMING ENFORCEMENT
Rules of the Games
Poker; Variations of Hold 'Em Poker
Temporary Adoption of Amendment: N.J.A.C.
13:69F-14.10**

Authority: N.J.S.A. 5:12-5, 69.a and e, 70.f, 99.a, and 100.

Take notice that the Division of Gaming Enforcement shall, pursuant to N.J.S.A. 5:12-69.e, conduct an experiment for the purpose of determining whether variations of the authorized game of hold 'em poker, known as "Pineapple" and "Crazy Pineapple," are suitable for casino use.

The experiment will be conducted in accordance with temporary rules, which shall be available in each casino participating in the experiment, and shall also be available from the Division upon request.

The test would allow a casino licensee which wishes to participate in the experiment, and which meets all the terms and conditions established by the Division, to implement these options in its casino.

This experiment could begin on or after July 23, 2012, and continue for a maximum of 270 days from that date, unless otherwise terminated by the Division or any of the participating casino licensees prior to that time, pursuant to the terms and conditions of the experiments.

Should the temporary amendments prove successful, in the judgment of the Division, the Division will propose them for final adoption, in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

TRANSPORTATION

(c)

**MOTOR VEHICLE COMMISSION
Driver Improvement Program and Probationary
Driver Program**

Adopted New Rules: N.J.A.C. 13:19-14

Proposed: January 3, 2012 at 44 N.J.R. 55(a).

Adopted: June 5, 2012 by the Motor Vehicle Commission, Raymond P. Martinez, Chairman.

Filed: June 20, 2012 as R.2012 d.140, **with substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 39:2-3, 39:3-13.4, and 39:5-30.2.

Effective Date: July 16, 2012.

Expiration Date: November 1, 2017.

Summary of Public Comments and Agency Responses:

The Commission received a written comment from Edward Baginski, AAA Clubs of New Jersey, in which the following comments were made:

1. COMMENT: As the burden of effort is placed on the provider a revenue split from 50/50 (\$75.00/\$75.00) should be reallocated with a split of 60/40 (\$90.00/\$60.00) in favor of the provider.

RESPONSE: The Commission disagrees. This is a voluntary program with great potential to provide additional business opportunities and income to providers and instructors alike. Though it is true that providers will be taking on the scheduling and teaching of the courses if they choose to participate in the program, the Commission will continue to incur administrative costs in connection with its statutorily mandated oversight of the Driver Improvement Program (DIP) and Probationary Driver Program (PDP), as well as provider and instructor licensing. The Commission has carefully considered the costs related to its oversight of the DIP and PDP programs, providers, and instructors, and determined that a \$75.00 administrative fee is necessary in order for the Commission to generate sufficient revenue to cover, as much as possible, the Commission's costs including, but not limited to: the generating of notices to thousands of drivers annually; course completion tracking for thousands of drivers annually; issuance of provider and instructor licenses; inspections, audits, investigations; recordkeeping; and administrative action where appropriate. Additionally, although providers will incur limited administrative costs in connection with this program, the Commission does not anticipate that a provider will consider participating if the provider will not earn sufficient income to cover administrative costs and overhead. It is anticipated that the provider will take these factors into consideration when considering whether to offer DIP and PDP courses.

2. COMMENT: The referenced course for PDP should be changed to "An Attitudinal Program to Help Young Drivers Make Good Decisions" and the course listed for DIP for AAA should be changed to "Offender Version of The Driver Improvement Program." (N.J.A.C. 13:19-14.3)