

DEPARTMENT OF COMMUNITY HEALTH
CRIME VICTIM'S SERVICES COMMISSION

GENERAL

(By authority conferred on the crime victims compensation board by section 3 of Act No. 223 of the Public Acts of 1976, being S18.353 of the Michigan Compiled Laws)

R 18.351 Definitions.

Rule 1. (1) As used in these rules:

(a) "Accomplice" means any person who knowingly aids or assists another person in the commission of a crime, either before, during, or after the crime.

(b) "Act" means Act No. 223 of the Public Acts of 1976, being S18.351 et seq. of the Michigan Compiled Laws.

(c) "Civil infraction" has the meaning prescribed by section 6a of Act No. 300 of the Public Acts of 1949, as amended, being S257.6a of the Michigan Compiled Laws.

(d) "Closed session" means a meeting or part of a meeting of the board which is closed to the public in order to protect certain rights of confidentiality.

(e) "Crime" means an act or omission forbidden by law which is not designated as a civil infraction and which is punishable, upon conviction, by imprisonment, a fine which is not a civil fine, or other penal discipline.

(f) "Criminally responsible" means legally accountable or legally answerable for a crime.

(g) "Dependent" means a person who receives at least 1/2 of his or her support from a deceased victim or claimant and includes a child of the victim born after his or her death.

(h) "Household" means persons who dwell together as a family under 1 roof and who are related by blood, marriage, or judicial decree.

(i) "Intimate personal privacy" means matters dealing with the mental or physical health of a person or the details of a crime involving sexual assault in any degree.

(j) "Legally incapacitated person" means a person, other than a minor, for whom a guardian has been appointed by a court.

(k) "Loss of support" means the cessation of a victim's earnings that were actually paid to or for a dependent prior to the victim's death and not reimbursed from insurance or public funds after the victim's death.

(l) "Meeting" means the convening of the board at which 2 or more members are present for the purpose of deliberating toward or rendering a decision on a public policy.

(m) "Minor" means a person who is less than 18 years of age.

(n) "Other services necessary" means recognized medical treatment, convalescent aids, supplies, and other equipment needed by the victim because of physical incapacity sustained as a direct result of the crime.

(o) "Peace officer" means an employee of this state, or any political subdivision thereof, who is employed as a police officer, sheriff, firefighter, conservation officer, or similar officer exercising powers of a police officer.

(p) "Resident" means a person who is living in this state when the crime occurs. Resident does not include a person who resides in another state or foreign country and who is temporarily in this state for business, recreation, or personal matters.

(q) "Unreimbursed and unreimbursable expenses" means expenses for which the claimant has no means of payment other than the claimant's assets or through an award of the board.

(r) "Writing" means any of the following:

(i) Handwriting.

(ii) Typewriting.

(iii) Printing.

(iv) Photostating.

(v) Photographing.

- (vi) Photocopying.
 - (vii) Any other means of recording, including the recording of letters, words, pictures, sounds, symbols, or any combination thereof.
 - (viii) Maps.
 - (ix) Papers.
 - (x) Magnetic or punched cards.
 - (xi) Discs.
 - (xii) Drums.
 - (xiii) Any other means of recording or retaining meaningful contents.
- (2) Terms defined in the act have the same meanings when used in these rules.

History: 1983 AACS.

R 18.352 Attorney fees.

Rule 2. (1) Attorney fees shall only be paid when the board makes an award to the claimant for medical expenses that the claimant has paid or for loss of earnings or loss of support, or both, payable to the claimant. The attorney shall not receive from the claimant or any other source an attorney fee attributable, in whole or part, to that portion of an award paid to medical providers.

(2) When a board member decides a claim in favor of a claimant and the claimant does not appeal to the full board, the attorney fee awarded by the board member shall not exceed 15% of the amount awarded to the claimant and is payable from the award.

(3) When the full board decides a claim totally or partially in favor of a claimant and judicial review is not sought within 30 days of the board decision, the attorney fee awarded by the board shall not exceed 15% of the amount awarded to the claimant and is payable from the award.

(4) In cases involving judicial review, where the claimant prevailed in whole or in part, the board, upon conclusion of any further review of the claim, shall determine and allow attorney fees pursuant to a fee request which is duly submitted or which has been agreed upon with the attorney of record. For purposes of this subrule only, the attorney fee shall not exceed 25% of the amount awarded to the claimant.

(5) An attorney shall not charge, demand, receive, or collect any fee for services rendered in connection with any claim or appeal or in conjunction with review before the board or judicial review, except as allowed under this rule. However, an attorney may agree to accept a lesser attorney fee than is allowed by this rule and may agree to waive or not accept any attorney fee.

(6) In the event of subrogation under section 14 of the act, if private counsel is involved, the chair or board may agree to reimburse attorney fees up to 15% of the amount paid to the board by the victim or claimant. However, for good cause shown, the board may elect to waive the limitation on attorney fees imposed by subrule (1) of this rule.

(7) If the board or a member of the board determines that the claimant will not suffer serious financial hardship, then attorney fees shall not be awarded.

History: 1983 AACS.

R 18.353 Application for compensation.

Rule 3. An application for compensation shall be made on a form provided by the board. A copy of these rules shall be provided to any applicant upon request.

History: 1983 AACS.

R 18.354 Claim filing time.

Rule 4. A claim is subject to the time limits for filing which are set forth in section 5 of the act; however, if a claim is filed within 6 months after the occurrence of the crime and unless contrary evidence exists, the board or its member may presume that good cause for delay, within the meaning of section 5, exists.

History: 1983 AACS.

R 18.355 Claimant cooperation with law enforcement agency and board required; claimant to bear burden of proof of authenticity and eligibility of claim.

Rule 5. (1) To receive an award, a claimant shall cooperate with the law enforcement agency investigating the crime giving rise to the claim and with the investigators, agents, and representatives of the board. If a claimant refuses to cooperate, the board member or board may deny the claim or reduce the size of any award.

(2) The final burden of proof of the authenticity and eligibility of a claim, or any part of a claim, rests with the claimant. When an award cannot be made because the law enforcement agency, medical providers, or employer cannot verify the claim, the claimant shall be given written notice of the particular deficiencies of verification. The information requested by the board as necessary to verify the claim shall be supplied by the claimant. If the claimant does not comply within a reasonable period of time, the claim shall be denied in whole or in part as appropriate.

History: 1983 AACS.

R 18.356 Nonreimbursable loss, damage, theft, and detriment.

Rule 6. (1) Loss of, damage to, or theft of, personal property is not eligible for reimbursement.

(2) Noneconomic detriment in the form of pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage is not eligible for reimbursement.

History: 1983 AACS.

R 18.357 Claims resulting from operation of motor vehicle prohibited; exception.

Rule 7. A claim resulting from the operation of a motor vehicle shall not be awarded, except when the claimed injuries are the result of a crime and not a civil infraction under state law. In appropriate circumstances, the board will refer the claimant to the department of state assigned claims plan.

History: 1983 AACS.

R 18.358 Burial payments.

Rule 8. (1) When an award is ordered for funeral expenses, including burial expenses, the board shall pay a burial benefit of not more than \$1,500.00 for each victim.

(2) Expenses for flowers, gravestones, catering services, or other personal and family accommodations not directly related to the funeral service and disposition of the body will not be considered.

(3) When the board awards funeral expenses which, in the absence of board payment, would be receivable from other public funds, the amount awarded shall not exceed the amount normally paid by the other sources.

History: 1983 AACS.

R 18.359 Travel costs.

Rule 9. (1) The costs of transporting the victim's body will be included in the burial benefit under R 18.358. Travel costs for family members will not be considered.

(2) Personal injury victims may be reimbursed for travel costs to and from a particular health care facility where a specific treatment or care unavailable locally is rendered. The board will consider all pertinent medical information in making its decision.

History: 1983 AACS.

R 18.360 Lost earnings award; permanent disability.

Rule 10. When a protracted award is ordered for lost earnings and subsequent medical reports indicate permanent disability, the board shall require the claimant to file with the social security administration for disability benefits. All claimants receiving compensation for lost earnings shall be required to make the application within 1 year from the date of the crime which gave rise to the claim.

History: 1983 AACS.

R 18.361 Serious financial hardship determination; reasonable standard of living.

Rule 11. (1) In determining serious financial hardship under section 11(5) of the act, the board member or board shall consider all of the financial resources of the claimant, except for the following exemptions:

(a) A homestead or 5 years' rent at the current rate at the time of the crime for an apartment dweller or dweller of a similar abode.

(b) Personal property consisting of clothing and other personal effects.

(c) Household furniture, appliances, and equipment.

(d) One family automobile selected by claimant or victim.

(e) Life insurance, except in death claims, and disability or death benefits paid or to be paid to a peace officer on account of injuries sustained in the course of employment.

(f) An additional amount not exceeding the victim's annual net taxable income, in the discretion of the board, after consideration of all other financial resources.

(2) In all cases, the board member shall render a decision which will, as nearly as practicable, permit the claimant or family to maintain a reasonable standard of living. Where out-of-pocket expenses or loss of earnings or support significantly lower this standard of living, the board member may consider this serious financial hardship.

History: 1983 AACS.

R 18.362 Award; manner of payment; verification of treatment; claim file.

Rule 12. (1) An award shall be paid in a lump sum, except for direct payments to medical care and other providers of services and for periodic payments to compensate for out-of-pocket expenses or loss of earnings or support where protracted disability has occurred.

(2) Upon submittal of additional out-of-pocket expenses or lost earnings, the board shall verify that treatment for the injuries has been rendered to the victim within the preceding 12-month period. If such verification cannot be made, the board may deny further awards for compensation.

(3) The board shall retain a complete claim file for a period of 4 years following the final disposition of the claims.

History: 1983 AACS.

R 18.363 Board meetings.

Rule 13. (1) All meetings of the board shall be open to the public, except as otherwise provided by Act No. 267 of the Public Acts of 1976, as amended, being S15.261 et seq. of the Michigan Compiled Laws.

(2) All writings prepared or used by, or in the possession of, the board shall be available for public inspection, except as otherwise provided by law or these rules.

(3) The first 15 minutes of the new business portion of each board meeting open to the public shall be reserved for public comment. A member of the public wishing to address the board shall be allotted a 3-minute time period. This time period may, in the discretion of the board chair, be increased. When it appears to the chair that there are more than 5 members of the public who wish to address the board, the chair has discretion either to increase the original 15-minute period of public

comment or set aside additional time for public comment as the last item of business during the open portion of the meeting.

History: 1983 AACCS.

R 18.364 Closed session of board; request; documents exempt from disclosure.

Rule 14. (1) A claimant who wishes to have matters of intimate personal privacy considered in a closed session of the board shall request a closed session, in writing, not less than 10 days prior to the scheduled date of the meeting of the board where the claim shall be considered. The 10-day requirement may be waived at the discretion of the board for good cause.

(2) All documents referred to by the board during the course of a closed session shall be considered part of the minutes of the closed session and are exempt from disclosure as provided by Act No. 442 of the Public Acts of 1976, as amended, being S15.231 et seq. of the Michigan Compiled Laws.

(3) When the board, in the course of its deliberations, is required to utilize or refer to documents which are exempt from disclosure by law or these rules, the chair shall announce in the preceding open portion of the meeting that the consideration of material which is exempt from discussion or disclosure by law or by these rules is required. The board shall then take a roll call vote on the question of closing the session. Upon the recording of a 2/3 vote of the board to close the session, the board shall go into closed session to discuss and consider the material.

History: 1983 AACCS.

R 18.365 Appeals; application for full board review of claim or evidentiary hearing.

Rule 15. (1) When a board member to whom a claim is assigned is unable to decide a claim in favor of the claimant or denies the claim in whole or in part, the claimant shall be advised in writing, of the right to full board review of the claim or an evidentiary hearing before the full board at the option of the claimant.

(2) Within 30 days after receipt of the report of the decision of the board member, a claimant, a claimant's attorney, or a board member may make an application, in writing, to the board at its Lansing office for consideration of the decision by the full board or an evidentiary hearing, if desired. The secretary of the board shall notify the claimant, the claimant's attorney, or the board member requesting the appeal of the date, time, and place when the appeal will be considered. Additional information which the claimant desires the board to consider shall be submitted to the board in Lansing not less than 10 days prior to such hearing.

History: 1983 AACCS.

R 18.366 Conduct of hearing.

Rule 16. (1) Where full board review, but not an evidentiary hearing, is requested, the board shall review the record and any additional information in support of the appeal.

(2) If an evidentiary hearing is requested, one shall be held and the board shall do the following:

(a) Hold a hearing.

(b) Administer oaths or affirmations.

(c) Examine any person under oath or affirmation.

(d) Issue subpoenas requiring the attendance and testimony of witnesses and the production of books, papers, documents and other evidence.

(e) Review the record and any additional material in support of the claim.

(3) The board, in its discretion, for good cause shown, may consider additional information submitted at the hearing.

History: 1983 AACCS.

R 18.367 Report and final decision of the board; judicial review.

Rule 17. (1) After reviewing the claimant's file and record evidence, a proposed final decision containing written findings of fact setting forth the basis for decision shall be prepared by the chair. If the proposed final decision of the board varies from the report of the board member, the proposed final decision shall set forth reasons for such variance.

(2) The proposed decision, with any amendments thereto, shall become the final decision of the board, for purposes of judicial review, on the date the chair of the board signs and dates such decision, if at least 1 other board member has also signed the final decision.

(3) The board shall immediately file its final decision with the secretary of the board. The secretary shall, within 15 days after such filing, notify the claimant of the final decision of the board and furnish a copy of the decision. Such notification shall advise the claimant of the statutory 30-day period after receipt of the board's final decision for filing a petition in the court of appeals for leave to appeal and review the board's decision.

History: 1983 AACs.