

CHAPTER 411. CRIME VICTIMS COMPENSATION**GENERAL PROVISIONS**

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GENERAL PROVISIONS**Authority**

The provisions of these §§ 411.1—411.3, §§ 411.11—411.18, §§ 411.31—411.33, §§ 411.41—411.44 and §§ 411.51—411.53 issued under section 312(13) of the Crime Victims Act (18 P. S. § 411.312(13)), unless otherwise noted.

Source

The provisions of these §§ 411.1—411.3, §§ 411.11—411.18, §§ 411.31—411.33, §§ 411.41—411.44 and §§ 411.51—411.53 adopted December 22, 2006, effective December 23, 2006, 36 Pa.B. 7815, unless otherwise noted.

§ 411.1. Scope.

Except as otherwise provided, this chapter applies to claims for compensation relating to crime injuries occurring on or after December 12, 2009.

Authority

The provisions of this § 411.1 amended under section 312(3) of the Crime Victims Act (18 P. S. § 11.312(3)).

Source

The provisions of this § 411.1 amended December 11, 2009, effective December 12, 2009, 39 Pa.B. 6980. Immediately preceding text appears at serial page (326790).

§ 411.2. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Crime Victims Act (18 P. S. §§ 11.101—11.5102).

Average weekly wage—The amount designated for persons covered by Articles I and II of the Unemployment Compensation Law (43 P. S. §§ 751—771) in this Commonwealth as determined periodically by the Department of Labor and Industry.

Dependent child—The child of a direct victim or intervenor on whose behalf regular payments are received for the purpose of whole or partial support and who is one of the following:

(i) Under 18 years of age, including an unborn child for the purposes of this chapter only as defined by 18 Pa.C.S. § 3203 (relating to definitions).

(ii) Eighteen years of age or older but under 23 years of age and currently attending secondary school or is a full-time student in a postsecondary educational institution.

(iii) Eighteen years of age or older but unable to provide for his own support due to a physical or mental disability.

Final decision—An OVS determination of a claim that may be appealed by the claimant as provided in 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action).

Guardian—A person appointed by a court for the care and management of a person or estate of a minor or incapacitated person, or designated by a parent of a minor to perform that role.

Health care provider—

(i) An individual authorized by a licensing board or agency of the Commonwealth or equivalent governmental entity to practice the science and skill of diagnosis and treatment of ailments of the human body.

(ii) The term includes medical doctor, osteopathic physician, chiropractor, dentist, registered nurse, optometrist, pharmacist, physical therapist, podiatrist, psychologist, licensed professional counselor and licensed social worker.

Human services provider—Social workers, children and youth caseworkers, Area Agency on Aging, victim service providers (system and community based advocates) and other social service professionals, including mental health, substance abuse and medical social work.

Immediate need—One hundred and twenty days from the date of the crime or 120 days from the date the victim is threatened by any change of circumstance or indicator of danger and a move or relocation is necessary to become or remain safe.

Medical care—Diagnostic, treatment or rehabilitative services performed in a health care facility regulated by the Commonwealth or equivalent governmental entity or performed by a health care provider or person under the direct supervision of a health care provider.

OVS—The Office of Victims' Services in the Pennsylvania Commission on Crime and Delinquency.

PFA—Protection From Abuse Order issued under 23 Pa.C.S. Chapter 61 (relating to protection from abuse).

Pigeon drop—The act of approaching a person and asking that person if he would like to share an amount of found money. In order to share the money, the person shows a good faith effort by willingly providing a specified amount of money with the expectation of receiving part of the “found” money.

Primary source of income—Fifty percent or more of the direct victim's gross annual income.

Principal support—Fifty percent or more of a claimant's living expenses.

Private residence—Includes a house, apartment, condominium, mobile home or other personal living space.

(b) The definitions in section 103 of the act (18 P. S. § 11.103) are incorporated by reference.

Authority

The provisions of this § 411.2 amended under section 312(3) of the Crime Victims Act (18 P. S. § 11.312(3)).

Source

The provisions of this § 411.2 amended December 11, 2009, effective December 12, 2009, 39 Pa.B. 6980. Immediately preceding text appears at serial pages (326790) and (325291).

§ 411.3. Persons eligible for compensation.

(a) *General rule.* Except as otherwise provided in the act, the following persons are eligible for compensation:

- (1) A direct victim.
- (2) An intervenor.
- (3) A surviving spouse, parent or child of a deceased direct victim or intervenor.
- (4) Other persons dependent for principal support upon a deceased direct victim or intervenor.
- (5) A person who assumes the obligation or who pays for the crime scene cleanup, funeral or burial expenses incurred as a direct result of the crime.
- (6) Hospitals or other licensed health care providers.
- (7) Persons eligible for counseling.

(b) *Exception.* A person who is criminally responsible for the crime upon which a claim is based or an accomplice of the person is not eligible to receive

compensation with respect to the claim. A member of the family of the individual who committed the crime is not eligible if the offender is living in the same household as the direct victim and will substantially benefit from the award. The Attorney General may at any time sue the offender or the direct victim, or both, to recover the award if the offender benefits from the award.

CLAIMS

§ 411.11. Filing procedures.

(a) A claim may be filed by a person eligible under the act and § 411.3(a) (relating to persons eligible for compensation).

(b) A claim shall be filed within the prescribed time frame under section 702(b) of the act (18 P. S. § 11.702(b)).

(c) A claimant may request compensation by completing and submitting OVS's official claim forms to OVS.

(d) A claim may be filed by mail, in person or electronically. If filed by mail, a claim is deemed filed on the date it is postmarked. If filed by electronic means or in person, it is deemed filed on the date received by OVS.

(e) When OVS receives a claim, a claim number is assigned and the data is entered into OVS's records.

(f) In determining whether the direct victim or intervenor complied with the act's requirement of reporting the crime to proper authorities within the prescribed time period after the occurrence of the crime, the following apply:

(1) Proper authorities may include a law enforcement officer; district attorney or other applicable prosecutorial authority; district justice; military police; campus police; United States Postal Inspection Service; appropriate hospital security; probation and parole officer; child protective services; adult protective services or, in the case of a PFA order, the prothonotary or equivalent authority. If the crime occurs in a foreign country, a proper authority includes the United States consulate.

(2) OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist:

(i) The direct victim, intervenor or claimant is mentally or physically incapacitated.

(ii) The victim is a minor.

(iii) There is a fear of retaliation.

(iv) The occurrence of the crime is not readily apparent.

(v) Other circumstances when good cause is shown by the claimant.

(g) In making the determinations discussed in subsections (b) and (f) for claims where the occurrence of the crime is not readily apparent, OVS may deem the prescribed time periods to begin to run on the date and time that the person with the obligation to report the crime or file the claim has knowledge that a crime occurred.

(h) Claimants do not have to wait until a PFA becomes final to file a claim. In the process of verifying a claim, OVS will confirm the disposition of a final PFA order.

(i) If a temporary PFA order is issued and the claimant chooses not to pursue a final order, OVS will consider the PFA order withdrawn and deny the claim

unless OVS determines the withdrawal to be justified. OVS may consider the withdrawal of a PFA justified when one of the following circumstances exist:

- (1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.
- (2) There is a fear of retaliation.
- (3) Other circumstances when good cause is shown by the claimant.

(j) Subsections (h) and (i) only cover the filing of an initial PFA. If there is a violation of a PFA involving an otherwise eligible crime, the crime shall be reported within the prescribed time frame set forth under section 707(a)(3) of the act (18 P. S. § 11.707(a)(3)) in a timely manner to the proper authorities, which may include filing of a private criminal complaint, to be considered for compensation payments.

(k) When requested by OVS, the claimant shall submit copies of documents that are needed to process the particular type of claim, which include the following:

(1) *Medical treatment expenses.*

(i) Itemized bills in the name of the claimant showing the name, address and telephone number of the provider, dates of service, type of service performed and the amount charged for each service.

(ii) Insurance benefit statements indicating payments or rejection.

(iii) Canceled checks, verification from a medical provider or receipts for any medical bills related to the injury that were paid by the direct victim, intervenor or claimant.

(iv) Written justification if the direct victim or intervenor is covered by an insurance plan or Medical Assistance, but did not utilize the prescribed coverage, such as that the direct victim or intervenor could not obtain the required care, could not maintain ongoing care from a previous provider, travel considerations or other circumstances when good cause is shown by the claimant.

(2) *Funeral expenses.*

(i) Certified death certificate.

(ii) Itemized funeral bills in the name of the claimant for which the claimant is responsible.

(iii) Canceled checks, receipts or verification from a provider for funeral bills relating to the death that were paid by claimant.

(iv) Statements for benefits or payments received by the claimant as a result of the death of the direct victim or intervenor, such as life insurance or Social Security death benefits.

(3) *Loss of earnings.*

(i) *Stolen money.*

(A) Statements for the month of the crime of payments such as Social Security, retirement, pension, disability, court-ordered child support or court-ordered spousal support.

(B) Federal tax returns as filed, including all schedules if applicable, for the years requested or a signed statement that the claimant is not required to file a tax return.

(C) Documentation of the homeowner's or renter's insurance coverage.

(ii) *Loss of wages.*

(A) Pay stubs or other earnings records for periods immediately prior to the loss. If not obtainable, withholding statements and Federal tax returns as filed, including schedules, if applicable, for the years requested, or a written statement that Federal tax returns were not filed.

(B) Full name and complete address of claimant's employer.

(C) Full name and complete address of a physician or psychologist who will certify the existence, duration and cause of the disability.

(4) *Loss of support.*

(i) Certified death certificate.

(ii) Full name and complete address of employer of the deceased.

(iii) Federal tax returns as filed, including schedules, if applicable, for the years requested, or a written statement that Federal tax returns were not filed. If unavailable, pay stubs, withholding statements or other earnings records for periods immediately prior to the injury.

(iv) Statements for benefits received as a result of the death of the direct victim or intervenor, such as life insurance, Social Security, veterans' benefits or survivor benefits.

(v) Documents that demonstrate financial dependency, including birth certificates, support orders or Federal tax returns as filed.

(vi) Guardianship papers, when applicable.

(5) *Counseling expenses.*

(i) Itemized bills in the name of the claimant showing the name, address and telephone number of the provider, dates of service and the amount charged.

(ii) Insurance benefit statements indicating payments or rejection.

(iii) Canceled checks, verification from a provider or receipts for any counseling bills related to the injury that were paid by the direct victim, intervenor or claimant.

(iv) Written justification if the direct victim or intervenor is covered by an insurance plan or Medical Assistance, but did not utilize the prescribed coverage, such as that the direct victim or intervenor could not obtain the required care, could not maintain ongoing care from a previous provider, travel considerations or other circumstances where good cause is shown by the claimant.

(v) The following information establishing the claimant's relationship to the direct victim, the claimant witnessing the crime or the claimant's discovery of the homicide victim:

(A) *Witness.* If the witness is not listed in the police report obtained by OVS, a written statement provided by someone who could substantiate that the witness was at the scene, preferably written by someone named in the police report.

(B) *Relative of direct victim.* A copy of a birth certificate, if applicable, or other identifiable information acknowledging the relationship to the direct victim.

(C) *Individual engaged to the direct victim.* An engagement announcement or a copy of the application for a marriage license. If either is unavailable, a written statement from the engaged individual plus a written statement from a family member acknowledging the intent of the union.

(D) *Shared household.* A copy of a document, such as a bill or lease or mortgage agreement that indicates the same address for the direct victim and the victim or claimant filing for counseling expenses.

(E) *Individual who discovers homicide body.* A police report.

(F) *Individual responsible for the direct victim's welfare.* Foster parent documentation, guardianship papers or other documentation showing that the claimant filing for counseling is an individual responsible for the direct victim's welfare.

(6) *Crime-scene cleanup expenses.*

(i) Itemized bills and receipts in the name of the claimant related to the crime scene cleanup for which the claimant is responsible.

(ii) Cancelled checks, receipts or verification from a provider for bills related to the crime scene cleanup.

(iii) Documentation of homeowner's or renter's insurance coverage.

(7) *Relocation expenses.*

(i) Itemized bills and receipts related to the relocation for which the claimant is responsible.

(ii) Cancelled checks, receipts or verification from a provider for bills related to the relocation.

(iii) A verification letter from a human service agency, law enforcement or medical provider explaining the immediate need for relocation.

(8) *Miscellaneous expenses.*

(i) Itemized bills and receipts in the name of the claimant for which the claimant is responsible related to the miscellaneous expense.

(ii) Cancelled checks, receipts or verification from a provider for bills related to the injury.

(I) The claimant shall provide OVS with information pertaining to payments received or to be received by another source as a result of the injury, including restitution payments, workers compensation, insurance benefits or awards or settlements in a civil action.

(m) If a minor or incapacitated person has more than one guardian, OVS will determine the appropriate party for filing a claim on behalf of the minor or incapacitated person.

(n) If the direct victim or intervenor dies while a nonhomicide claim relating to that direct victim or intervenor is being processed, OVS may substitute the executor or administrator of the direct victim or intervenor and complete the processing of the claim. A claim may not be filed by the estate of a direct victim or intervenor.

(o) The claimant may request a supplemental award by submitting additional out-of-pocket expenses or losses at any time after the initial claim, provided that the claimant has not received the maximum award payable by law. OVS will verify out-of-pocket expenses and losses submitted for a supplemental award to determine that they directly relate to the original crime.

§ 411.12. Review.

(a) OVS will review the claim and supporting documents and investigate the validity of the claim. OVS will conduct a comprehensive investigation of the claim including, as necessary, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.

(b) If additional information is needed to determine the eligibility or validity of a claim, or to substantiate the degree of loss, OVS may ask the claimant for that information or request it directly from outside entities to the extent permitted by law.

(c) OVS may issue subpoenas and subpoenas duces tecum, either on its own instance or upon written application of a party. Subpoenas and subpoenas duces tecum must comply with 231 Pa. Code (relating to rules of civil procedure). Their issuance must depend upon a showing of necessity. OVS, on its own motion or on the application of the claimant, will, whenever necessary, and upon the terms and conditions as OVS may determine, take or cause to be taken affidavits and depositions of witnesses residing within or outside this Commonwealth.

(d) OVS may not request or review counseling notes of mental health service providers. OVS will request an assessment from the mental health service provider as to the extent the service provided is needed as a direct result of the crime.

(e) OVS, at its expense, may direct an examination of the direct victim or intervenor by a health care provider designated by OVS. The direct victim or intervenor's failure to appear for the examination may result in OVS's denial of the applicable portion of the claimant's request for reimbursement.

(f) OVS will investigate and determine claims regardless of whether the alleged criminal has been apprehended, prosecuted or adjudicated for the criminal incident which is the basis for the claim.

Cross References

This section cited in 37 Pa. Code § 411.13 (relating to closing of claims).

§ 411.13. Closing of claims.

(a) OVS will close a claim when a determination has been made and written notification has been given to the claimant.

(b) When OVS has requested additional information under § 411.12(b) (relating to review) and the information is not provided within 60 days of the request, OVS will close the claim file until the requested information is received.

(c) If sufficient information is not provided to OVS to determine eligibility within 2 years from the date of the filing of the claim, the claim will be closed with no further right of appeal. OVS will attempt to notify the claimant in writing 6 months prior to the closing of the claim.

(d) Eligible claims in which no verifiable out-of-pocket expense or loss has been received by OVS within 5 years from the date of the filing of the claim will be closed with no further right of appeal. OVS will attempt to notify the claimant in writing 6 months prior to the closing of the claim.

(e) Subsection (d) does not apply when the direct victim was a minor at the time the crime was committed.

(f) OVS may reopen a claim at any time for further investigation.

§ 411.14. Determinations.

(a) If OVS is able to make a determination that the claim does not meet the basic eligibility requirements or the action of the direct victim, intervenor or claimant affects the award, the claim will be denied in writing as a statutory denial or denial for cause.

(b) OVS will determine whether to grant an award, increase or decrease an award or deny the claim based on the supporting documents, the report of the investigation and staff recommendations.

(c) OVS will promptly notify the claimant of its determination in writing. OVS may also send a copy of the determination to all appropriate individuals, including the State Treasurer, court personnel, the prosecutor of the county where the crime occurred, victim advocate or the claimant's attorney of record.

§ 411.15. Actions affecting awards.

(a) Except as provided in the act, OVS may deny a claim or reduce the amount awarded if it finds that the conduct of the direct victim or intervenor contributed to the injury. The conduct of the direct victim or intervenor will be deemed to have contributed to the injury if the direct victim or intervenor did one of the following:

(1) Initiated, provoked or prolonged a verbal or physical confrontation with the offender.

- (2) Participated in an illegal act that was causally related to the injuries sustained.
 - (3) Acted in a manner that placed the direct victim or intervenor into a situation likely to result in injury.
 - (4) Entered, knowingly and willingly, into a vehicle driven by someone under the influence.
 - (5) Sought retaliation against the offender.
 - (6) Entered into a physical altercation by mutual consent.
 - (7) Was charged by law enforcement with criminal conduct as a result of the crime.
- (b) In determining whether the conduct of a direct victim or intervenor warrants a denial or reduction of the award, OVS may consider evidence indicating that the direct victim or intervenor was acting with legal justification as defined in 18 Pa.C.S. (relating to the Crimes Code) or other evidence of mitigation that the claimant asks OVS to consider.
- (c) OVS may assess a contribution amount or deny in auto-related crimes when the victim is the driver of the vehicle and the victim does not have a valid license or the victim's driver's license has been revoked or was under suspension at the time of the crime.
- (d) OVS will assess a \$5,000 contribution for an award for medical expenses, or the current amount of medical benefits coverage required under Pennsylvania law, if a direct victim or intervenor was injured while driving his own car without insurance.
- (e) Stolen cash claims that are received and are eligible for an award will have a minimum 10% contribution assessed if they fall under the definition of "pigeon drop."
- (f) OVS may deny a claim or reduce the amount awarded or require repayment of a prior award if it finds that a direct victim, intervenor or claimant has not cooperated fully with law enforcement agencies or OVS. Failure to cooperate includes one or more of the following:
- (1) Failure to cooperate fully with a law enforcement agency in the investigation of the crime on which the claim is based.
 - (2) Failure to cooperate fully in the prosecution of the alleged offender of the crime on which the claim is based.
 - (3) Failure to provide truthful, complete and accurate information for OVS to determine the eligibility or validity of a claim or amount of an award.
 - (4) In crimes involving stolen or defrauded money, failure to implement personal crime prevention techniques recommended by the local police department, victim service programs or crime prevention programs at OVS's request when crimes are similar in nature and repeated.
- (g) OVS may consider a failure to cooperate with law enforcement and OVS to be justified when one of the following circumstances exist:

- (1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.
 - (2) There is a fear of retaliation.
 - (3) The victim is a minor.
 - (4) Other circumstances when good cause is shown by the claimant.
- (h) If the crime involved is related to domestic violence, the conduct of the direct victim will not be considered unless the direct victim was the primary aggressor. In determining which party was the primary aggressor, OVS will consider the following:
- (1) Prior acts of domestic violence.
 - (2) The relative severity of the injuries inflicted upon the persons involved in those prior acts of domestic violence.
 - (3) The likelihood of future injury.
 - (4) Whether, during the prior acts, one of the parties acted in self-defense.
 - (5) The totality of the circumstances surrounding the crime.

Cros References

This section cited in 37 Pa. Code § 411.18 (relating to actions affecting awards).

§ 411.16. Reductions, offsets and limitations.

- (a) Except as otherwise provided in the act, an award made under the act and this chapter shall be reduced by the amount of any payments received or to be received as follows by the claimant as a result of the injury:
- (1) From or on behalf of the individual who committed the crime.
 - (2) Under insurance or health and welfare programs, including those mandated by law.
 - (3) Under a contract of insurance wherein the claimant is the beneficiary.
 - (4) From public funds.
 - (5) As an emergency award under section 706 of the act (18 P. S. § 11.706).
 - (6) Under pension programs, including those providing for disability or survivor's benefits.
 - (7) Under a settlement or award made by or on behalf of a party alleged to be responsible in whole or in part for the injury, without regard to the party's criminal culpability.
- (b) Any decision by OVS to reduce, offset or limit an award to a claimant will only be made after first considering the ability of OVS to exercise its right to subrogation and restitution.
- (c) Charitable donations specifically designated for a funeral expense or which appear on a funeral bill as a direct payment and charitable donations specifically designated for an eligible expense or which appear on any bill as a direct payment will be used as an offset.
- (d) In claims involving death or burial, OVS will reimburse travel expenses for the transport of a body or making funeral arrangements for no more than two persons, including a person designated by the family or person who pays for the funeral.

(e) In claims involving death or burial, reimbursement will not be made for alcoholic beverages, postage, thank you gifts and newspaper articles or paid advertisements relating to the death or burial, other than the obituary and notice of the time and place of the funeral or burial services.

(f) When an injury is the result of a motor vehicle incident and the injury is covered by liability or first party benefits, including under/insured and uninsured motorist coverages, a provider may not request payment in excess of reimbursement allowances applicable in this Commonwealth under the Medicare Program (see 75 Pa.C.S. § 1797(a) (relating to customary charges for treatment)) or their usual and customary charge, whichever is less.

(g) Medical, rehabilitation or other devices, including wheel chairs, chair lifts, ramps, van conversion equipment, therapy spas or special needs home remodeling that exceeds \$5,000 will need to have two bids unless good cause is shown. OVS will pay the lowest amount unless good cause is shown justifying the higher amount.

(h) If the direct victim or intervenor has no financial means to order the needed services or equipment that exceed \$5,000 listed in subsection (g), OVS will assist the claimant by evaluating the claim prior to purchase and make information available to the potential providers.

(i) In claims involving stolen money or crime scene clean-up, if a claimant chooses not to access any of his homeowner's or renter's insurance, OVS will apply as an offset any amount that the claimant would have been paid by the insurance company.

Cross References

This section cited in 37 Pa. Code § 411.18 (relating to awards).

§ 411.17. Emergency awards.

(a) If it appears to OVS that the claimant has an urgent financial need, OVS may make an emergency award to the claimant as a determination on the claim.

(b) An emergency award is solely for a claimant who incurs an undue hardship by paying medical expenses or funeral expenses out of his own pocket, or who incurred loss of earnings or support as a result of the crime incident.

(c) The total amount of an emergency award will not exceed \$5,000 per claim.

(d) OVS will expeditiously determine that the eligibility requirements have been met, review submitted documentation and process the request.

(e) OVS may reconsider an emergency award as a determination and may increase previous awards for emergency compensation up to \$5,000 per claim.

Authority

The provisions of this § 411.17 amended under section 312(3) of the Crime Victims Act (18 P. S. § 11.312(3)).

Source

The provisions of this § 411.17 amended December 11, 2009, effective December 12, 2009, 39 Pa.B. 6980. Immediately preceding text appears at serial page (325300).

§ 411.18. Awards.

(a) If the losses payable by OVS for out-of-pocket loss and loss of support or loss of earnings exceed the overall monetary limitation in the act, or the overall limitation as reduced by a contribution assessed by OVS under § 411.15 (relating to actions affecting awards), OVS will allocate the award as follows:

(1) Out-of-pocket losses will be paid in full, followed by as much of the loss of support or loss of earnings as resources allow.

(2) If the total out-of-pocket losses exceed the overall limitation in the act, OVS will attempt to pay unpaid providers in full, followed by reimbursements to claimants for expenses already paid. OVS will attempt to satisfy the expenses of as many unpaid providers as feasible, to minimize the number of creditors seeking payment from the claimant.

(3) If more than one claimant files a claim for allowable expenses relating to the death of the victim or the intervenor, the award will be divided proportionately among the claimants when filed within the same time frame. In all other cases, awards are considered in the order that they are received.

(b) A claimant may not accept a portion of OVS's determination and reject another portion of the same determination. If a claimant desires to contest a portion of OVS's determination, the claimant shall contest the entire determination.

(c) OVS will reduce an award of compensation by the amount of any other payments received or to be received by the claimant as a result of the injury, as set forth in the act and under § 411.16 (relating to reductions, offsets and limitations).

(d) After OVS has made an award relating to an injury, a person who receives any amounts paid by another source as a result of the injury shall notify OVS about the payments.

(e) If a court has ordered an offender to pay restitution for the injury, but the order is not specific as to which components of the claimant's loss are to be reimbursed by the restitution payments, OVS will deem the restitution payments as being applied first to property losses incident to the crime that cannot be compensated under the act. Only after the property losses are fully paid will OVS use the restitution payments to offset for losses for which OVS has awarded or may award compensation.

(f) OVS may make a supplemental award to a claimant who previously received an award from OVS and who subsequently incurs an additional loss that is attributable to the original injury when the maximum award under the law has not been exceeded.

(g) If a claimant is liable for a bill incurred for out-of-pocket losses as a result of the crime injury but has not paid the balance, OVS will order payment to be made directly to the provider of the service.

(h) OVS may reimburse all medical copays and deductibles.

- (i) If OVS makes an error in the amount of an award, OVS may seek repayment of the award.
- (j) OVS retains the discretion to determine the priority of awards.
- (k) In determining whether an injury is a direct result of a crime, OVS may consider a certification by a service provider.

APPEALS

§ 411.31. Reconsideration

- (a) A claimant may contest OVS's determination by submitting a written request for reconsideration no later than 30 days from the date of the determination. If a request for reconsideration is not filed within the time required, the determination becomes a final decision of OVS.
- (b) OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist:
 - (1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.
 - (2) Other circumstances when good cause is shown by the claimant.
- (c) If requesting reconsideration, the claimant shall provide any additional information or clarification that would assist OVS in conducting its reconsideration.
- (d) Based on further review and additional information or clarification that OVS receives, OVS will issue a reconsidered determination that either reaffirms or modifies the determination.
- (e) OVS may issue the reconsidered determination as a final decision of the agency if it determines that the facts developed in the claims determination process establish that a particular determination is warranted as a matter of law.

§ 411.32. Hearing.

- (a) If OVS is unable to determine if a claim is justified based upon supporting documents, it may direct a hearing before a hearing examiner designated by the OVS.
- (b) Except for request for reconsideration falling under § 411.31(e) (relating to reconsideration), a claimant may appeal the reconsidered determination by OVS by requesting a hearing.
- (c) A claimant may submit a written request for a hearing no later than 30 days after OVS issues its reconsidered determination. If a claimant fails to file the request for hearing within this time, the reconsideration determination becomes a final decision of OVS.
- (d) OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist:
 - (1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

- (2) Other circumstances when good cause is shown by the claimant.
- (e) If requesting a hearing, the claimant shall provide a specific reason why the claimant asserts that OVS's determination is not correct.
- (f) A hearing officer who has no previous involvement in any aspect of the claim will be assigned by OVS.
- (g) Title 1 of the *Pennsylvania Code*, Part II (relating to the General Rules of Administrative Practice and Procedures) governs a hearing to the extent that its provisions are not inconsistent with this chapter.
- (h) At least 30 days before the date of hearing, the claimant, the claimant's attorney and the victim's advocate will be provided written notice of the time, place and purpose of the hearing.
- (i) The claimant shall provide written confirmation to OVS of the claimant's intent to attend the hearing, including documentary exhibits to be presented and a list of witnesses which must be received by OVS at least 10 days prior to the hearing date.
- (j) Failure to comply with the confirmation requirements in subsection (i) may result in cancellation of the hearing.
- (k) A cancelled hearing may be rescheduled if the claimant shows good cause for failure to comply with subsection (i). A hearing will not be rescheduled more than once, unless OVS deems it necessary.
- (l) The attorney representing OVS may submit a prehearing memorandum to the hearing officer, with a copy to the claimant, outlining the legal and factual positions of OVS with respect to the claim and listing witnesses and documentary exhibits to be presented at the hearing. The attorney representing OVS may subpoena for attendance of witnesses or for production of documentary evidence.
- (m) The claimant may subpoena for attendance of witnesses or for production of documentary evidence.
- (n) Upon a showing of relevancy and materiality, the hearing officer may issue subpoenas for both the OVS and the claimant for attendance of witnesses or for the production of documentary evidence.
- (o) In conducting the hearing, the hearing officer will liberally allow the admission of evidence that may not conform to the strict rules of evidence under common law or court rules. A stenographer or court reporter shall record the proceedings. Witnesses shall testify under oath.
- (p) The claimant shall have the burden of proving entitlement to compensation by a preponderance of the evidence.
- (q) Both OVS and the claimant may present testimony in support of their respective positions and cross-examine the opposing party's witnesses.
- (r) Hearings generally will be open to the public except that the hearing may be held in camera in any of the following instances:
- (1) Prosecution against the alleged perpetrator of the crime is pending.
 - (2) The welfare and safety of the direct victim, intervenor or his family or community may be adversely affected by a public hearing.

(3) To protect the rights and interests of a minor.

(s) A claimant may have support persons or victim advocates, or both, accompany him. The number of advocates and support persons may be limited by the hearing officer.

(t) Upon adjourning the hearing, the hearing officer will offer the claimant and OVS's attorney an opportunity to file posthearing briefs, to be filed after the transcript is issued, on a schedule to be determined by the hearing officer.

(u) Upon receipt of the transcript from the stenographer, notification will be sent by certified mail to the claimant that the transcript is available and can be purchased at the claimant's own expense.

(v) OVS will reimburse claimants \$20 per day for attendance at a hearing directed by OVS in connection with the claim. Additional expenses will be reimbursed as follows:

(1) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees for travel.

(2) Common carrier fares when preapproved by OVS.

(3) Lodging the night before or the night after a hearing session, to a daily maximum of \$75, if the claimant must travel at least 50 miles from home for the hearing.

§ 411.33. Final decision after hearing.

(a) The hearing officer will issue a report and recommendation which will be delivered to a designated Commission official acting on behalf of OVS who has no previous involvement in the claim.

(b) The designated Commission official will review the report and recommendation, the hearing transcript and the documentary exhibits. The designated Commission official may not have access to information not in the hearing record.

(c) The designated Commission official may not be advised in the hearing process by an attorney or any OVS staff member who has previous involvement with any aspect of the claim that is being heard. The designated Commission official may request the General Counsel of the Commonwealth to appoint an attorney who has no prior involvement to provide advice on the matter.

(d) Upon completing the review of the hearing officer's report and recommendation, the designated Commission official will do one of the following on behalf of OVS:

(1) Adopt the hearing officer's report and recommendation as written as a final decision.

(2) Modify the report and recommendation and issue the modified document as the final decision.

(3) Reject the report and recommendation in its entirety and prepare and issue a final decision for OVS.

(e) The designated Commission official will distribute the final decision to the claimant, the claimant's attorney, the victim's advocate and to OVS.

(f) The claimant shall have the right of further appeal as set forth in the act or other applicable law.

SCHEDULE OF REIMBURSEMENT RATES AND COMPENSATION LIMITS

§ 411.41. Amount.

An award made under the act and this chapter will be in an amount not exceeding out-of-pocket loss, together with loss of past, present or future earnings or support resulting from the injury. The total amount of an award may not exceed \$35,000 except for payment of the following:

- (1) Counseling, the maximum amount of which must be in accordance with section 707(b)(4.1) of the act. (18 P. S. § 11.707(b) (4.1))
- (2) Forensic rape examination and medications directly related to the sexual offense, the amount of which may not exceed \$1,000.
- (3) Reasonable and necessary costs of cleaning the crime scene of a private residence, the amount of which may not exceed \$500.

§ 411.42. Out-of-pocket loss.

(a) *General.* The following general provisions apply to reimbursement for out-of-pocket loss.

- (1) OVS may make a monetary award for an out-of-pocket loss as it is defined in the act.
- (2) OVS may pay the service provider directly or reimburse the claimant for amounts paid, as applicable.

(b) *Medical expenses.* The following provisions for payment of medical expenses apply:

- (1) OVS will pay a hospital or other licensed health care provider at the rate of 65% of the usual and customary charge for the service rendered.
- (2) This rate will apply to any bill for services incurred on or after December 12, 2009.
- (3) Forensic rape examinations.
 - (i) OVS will reimburse a maximum of \$1,000 to a hospital or other licensed health care provider, or both, for a forensic rape examination and medications directly related to the sexual offense.
 - (ii) The reimbursement will not include expenses for analyzing collected evidence for DNA or presence of Rohypnol or other similar drugs.
 - (iii) Claims shall be filed with OVS no later than 1 year after the date of the crime.
 - (iv) OVS will reimburse a direct victim who is erroneously billed and subsequently pays the cost of the forensic rape examination or medications

directly related to the sexual offense. The reimbursement will be subject to the \$1,000 monetary limitation.

(c) *Funeral expenses.* Except as otherwise set forth in this subsection, OVS will reimburse for expenses relating to a funeral of a direct victim or intervenor. The total reimbursement amount for funeral expenses will not exceed \$6,500.

(1) Funeral expenses to be reimbursed are as follows:

- (i) Cremation.
- (ii) Interment.
- (iii) Body preparation including embalming.
- (iv) Grave opening and closing.
- (v) Cemetery plot, tent and chairs.
- (vi) Mausoleum.
- (vii) Viewing services and facilities.
- (viii) Automotive equipment, such as the hearse, limousine and flower car.
- (ix) Death announcements, prayer cards, register book and thank you cards.
- (x) Casket or urn.
- (xi) Minister, pastor, rabbi or other member of the clergy.
- (xii) Monument.
- (xiii) Floral arrangements.
- (xiv) Funeral or memorial meal.
- (xv) Clothing purchased for the deceased for the funeral or interment.
- (xvi) Other miscellaneous expenses, including organist, programs, death certificates, obituary notice and notice of the time and place of the funeral or burial services.

(d) *Replacement of personal health-related items damaged or stolen as a result of a crime.* Except as otherwise set forth in this subsection, OVS will reimburse a claimant for costs for the replacement of each prosthetic device, wheelchair, cane, walker, hearing aid, eyeglasses or other corrective lenses, dental device or prescription medications. Reimbursement will not exceed \$1,000 and will be subject to the following limitations:

- (1) Two hundred dollars for eyeglass frames.
- (2) One thousand dollars for replacement of all combined prescription medications stolen or damaged in a single crime incident.
- (3) One hundred dollars for replacement of canes.
- (4) Two hundred fifty dollars for replacement for walkers.

(e) *Counseling.* OVS will pay expenses of counseling performed by or under the supervision of a psychiatrist, psychologist, licensed professional counselor or licensed social worker to claimants as follows:

- (1) A maximum of \$10,000 in total expenses of a direct victim who was under 18 years of age upon the occurrence of the crime.

- (2) A maximum of \$5,000 in total expenses of a direct victim who was 18 years of age or older upon the occurrence of the crime.
- (3) A maximum of \$5,000 in total expenses of any of the following individuals affected by the homicide of a direct victim:
 - (i) An individual responsible for the welfare of the direct victim, which includes legal guardians and foster parents.
 - (ii) An individual related in the second degree of consanguinity or affinity to the direct victim.
 - (iii) An individual residing in the same household with the direct victim.
 - (iv) An individual engaged to be married to the direct victim.
- (4) A maximum of \$2,500 in total expenses of any of the individuals described in paragraph (3) affected by a crime against a direct victim that is not a homicide.
- (5) A maximum of \$1,500 in total expenses of an individual who:
 - (i) Is physically present at a crime scene and witnesses a violent crime.
 - (ii) Discovers the body in a homicide.
- (6) For counseling expenses relating to a homicide, OVS may not reduce the amount of the award or deny the reimbursement due to the conduct of the direct victim.
- (f) *Relocation expenses.* OVS will reimburse for expenses incurred by the temporary or permanent relocation of a direct victim and individuals residing in the direct victim's household when immediate relocation is necessary to protect their health and safety. This reimbursement will not exceed \$1,000 per household for each direct victim for the following:
 - (1) Relocation expenses to be reimbursed are as follows:
 - (i) Lodging to a daily maximum of \$75.
 - (ii) Rental of substitute living quarters.
 - (iii) Utility connection fees, which do not include cable.
 - (iv) Rental of a passenger vehicle for a total daily maximum of \$30.
 - (v) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees for travel.
 - (vi) Common carrier fares.
 - (vii) Moving company charges or van rental.
 - (viii) Tolls and parking expenses.
 - (ix) Rental of post office box.
 - (x) Charges for storage of personal belongings.
 - (xi) Child care expenses.
 - (2) Reimbursement will be made only when a medical provider, human services provider or law enforcement representative, which may include a district attorney or other prosecutorial agency, verifies the immediate need for relocation.
 - (3) OVS may consider a delay past the prescribed immediate need time period to be justified when the direct victim, intervenor or claimant is mentally

or physically incapacitated, there is a fear of retaliation or other circumstances when good cause is shown by the claimant.

(g) *Travel expenses.* OVS will reimburse expenses associated with travel necessary and reasonable as determined by OVS to obtain medical care or counseling, attend or participate in criminal justice or protection from abuse proceedings, and other circumstances when good cause is shown by the claimant. In the case of an injury that results in death, for travel in connection with making the funeral arrangements, transport of the body and attendance of funeral services as follows:

- (1) Meals totaling no more than \$28 per day, with no more than \$6 for breakfast, \$6 for lunch and \$16 for dinner.
- (2) Lodging to a daily maximum of \$75.
- (3) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees.
- (4) Vehicle rental to a daily maximum of \$30.
- (5) Payment of a driver other than common carriers needed as result of a crime at maximum hourly rate of \$8.
- (6) Common carrier fares in full.
- (7) Tolls and parking expenses.
- (8) Meals and lodging reimbursement, limited to trips of 50 miles or more from the eligible person's home.
- (9) Containers or other necessary requirements to transport the body.
- (10) In the case of an injury that results in death, for travel in connection with the transport of the body, making funeral arrangements and attending the funeral services not to exceed 5 days.

(h) *Crime scene clean up.* The cost of cleaning the crime scene of a private residence up to a maximum of \$500.

- (1) Reimbursement will be limited to the cost of cleaning supplies purchased for the purpose of cleaning the scene, the cost of any necessary equipment purchased or rented and the cost of professional labor for the purpose of cleaning the crime scene.
- (2) Multiple private residences may each be considered for crime scene cleanup if the sites are identified in the police report. The maximum award amount for each crime scene cleanup is \$500.
- (3) Cleaning means to remove or attempt to remove blood and stains caused by bodily fluids, food, paint or other materials used to deface property as a direct result of the crime or other dirt or debris caused by the processing of the crime scene.
- (4) Stains deliberately caused by acts of vandalism and other intentional acts are property damage which is expressly excluded from the definition of "out of pocket loss" contained in the act.

(i) *Miscellaneous expenses.* OVS may reimburse a claimant for other services reasonably necessary, including the following:

(1) The purchase or rental of nonmedical remedial care or products that are needed to assist in normal, daily life functions and are prescribed or recommended by a health care provider, such as a wheel chair ramp, lifts or other special accommodations, including equipment or robotic devices needed to assist in normal, daily life functions.

(2) The cost of obtaining services needed as a result of the crime such as laundering, cleaning, child care, administration of medication, food shopping and meal preparation.

(i) Members of the family of the direct victim or intervenor engaged to perform the services will be paid their net loss of earnings not to exceed the average weekly wage and if not otherwise reimbursed for the loss of earnings.

(ii) Individuals engaged to perform services who are not family members will be paid a maximum hourly rate of \$8.

(3) At the discretion of OVS, telephone and television expenses incurred in connection with inpatient care of the direct victim or intervenor due to the injury.

(4) At the discretion of OVS, charges incurred for records, products or services including those for rehabilitation, rehabilitative occupational training, other remedial treatment and care, tutors and interpreters.

Authority

The provisions of this § 411.42 amended under section 312(3) of the Crime Victims Act (18 P. S. § 11.312(3)).

Source

The provisions of this § 411.42 amended December 11, 2009, effective December 12, 2009, 39 Pa.B. 6980. Immediately preceding text appears at serial pages (325305) to (325309).

§ 411.43. Loss of earnings.

(a) OVS may make an award for the loss of cash equal to one month's net worth of Social Security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support payments if the payments are the primary source of the victims income and the victim is deprived of the money as a direct result of a crime. The actual amount stolen must be indicated in the police report. In no instance may payment exceed the amount stolen. Changes or amendments to the amount stolen must be made to the police within 2 weeks of the crime and subsequently documented by the police.

(b) OVS may make an award within the monetary limitations of the act to compensate a direct victim, intervenor or claimant for loss of earnings attributable to the injury not to exceed the average weekly wage if the claimant was not

otherwise reimbursed for the loss. A loss of earnings must be definitely ascertainable at the time of the injury and may not include a loss that is conditioned upon future events.

(c) In claims involving the death of a direct victim or intervenor, OVS may pay up to 2 week's net loss of earnings in connection with the death not to exceed the average weekly wage if the claimant was not otherwise reimbursed for the loss. The loss is limited to that suffered by a claimant who incurred a loss of earnings as a result of one of the following:

- (1) Trauma.
- (2) Making funeral arrangements.
- (3) Accompanying the deceased to the place of interment.

(d) The following formula will be used to calculate loss-of-earnings for wage earners:

Loss of Earnings = Gross Earnings – Estimated Tax Obligations – Other Benefits Received

(e) For purposes of the formula in subsection (d), the following apply:

(1) "Gross earnings" include taxable and nontaxable income that was terminated or reduced as a result of injury. Overtime may be included if the claimant demonstrates a history of regular overtime pay or provides verification that overtime is a condition of employment.

(2) Estimated tax obligations include Federal, State and local taxes.

(3) "Other benefits received" include disability payments, employer paid leave, cash assistance, food stamps, workers' compensation, restitution or awards or settlements from a civil action or insurance payment.

(f) In calculating gross earnings, OVS may use either a time period immediately preceding the crime, the tax year in which the crime occurred or the most recent tax year that ended prior to the year of the crime.

(g) As a condition for continuing receipt of loss of earnings benefits, OVS may require the claimant to file a claim for and pursue other benefits to which the claimant may be entitled and which could be an offset to the loss of earnings award.

(h) For a claimant who is self-employed and who continues to operate his business during the period of disability, OVS may compensate the claimant for the amount paid to other persons hired to perform the services usually performed by the claimant.

(i) For a claimant whose unemployment compensation benefits are suspended as a result of the injury, OVS may make an award to replace the suspended benefits.

(j) If the claimant was unemployed at the time of the injury and provides OVS with an affidavit from the employer on company letterhead stating the beginning date of employment, the hours per week to be worked, and the pay rate along with the employer's Federal Identification Number (FID#) certifying that

the claimant was unable to begin because of the injury, OVS may measure loss of earnings based on anticipated earnings that would have been received in the new position.

(k) If the claimant was self-employed for less than a year prior to the injury and the tax records consequently provide a questionable measure of the claimant's earning potential, OVS may measure gross earnings by using the claimant's earnings as an employee for the period immediately prior to the start of the claimant's business.

(l) If a claimant is self-employed and is unable to fulfill a contract negotiated and signed prior to the crime due to the injury, OVS may consider the lost net income.

§ 411.44. Loss of support.

(a) OVS may make an award within the monetary limitations of the act to compensate an eligible person or persons who, as a consequence of the injury causing the death of a direct victim or intervenor, is deprived of the financial support that the direct victim or intervenor had been required by court order to provide or had actually been providing at the time of the injury that caused the death. When a court-ordered support obligation is in effect at the time of an injury causing the death, the following formula will be used to calculate loss of support:

$$\text{Loss of Support} = \text{Support} - \text{Other Benefits Received}$$

(b) For purposes of the formula in subsection (a), the following apply:

(1) "Support" includes annual support based on obligation specified in the order plus any amount in arrears due to the claimant at time of death.

(2) "Other benefits received" include restitution, insurance benefits, Social Security or pension benefits and awards from civil actions.

(c) When no court-ordered support obligation is in effect at the time of an injury causing the death of a direct victim or intervenor, the following formula will be used to calculate loss of support:

$$\text{Loss of Support} = \text{Support} - \text{Other Benefits Received}$$

(d) For purposes of the formula in subsection (c), the following apply:

(1) "Support" includes the gross earnings less estimated tax obligations multiplied by 80%. Gross earnings include all taxable and nontaxable income that terminated at time of death such as wages, business income, retirement payments, Social Security payments and other benefits.

(2) "Other benefits received" include restitution, insurance benefits, Social Security or pension benefits and awards from civil actions.

(3) Loss of support must be definitely ascertainable at the time of the injury that caused the death and may not include a loss that is conditioned upon future events.

(e) In applying the formula in subsection(c), the following conditions apply:

(1) A surviving spouse or dependent child will be allocated up to 80% of the net annual earnings of the victim or intervenor.

(2) A surviving parent will be allocated the actual amount of support provided by the direct victim or intervenor, not to exceed 80% of the net annual earnings.

(3) Any other person dependent upon the direct victim or intervenor for principal support will be allocated the actual amount of support provided by the direct victim or intervenor, not to exceed 80% of the net annual earnings.

(f) When calculating loss of support, OVS may consider as applicable, the life expectancy or labor force participation expectancy of the direct victim or intervenor, or the age of the dependent.

(g) In calculating gross earnings, OVS may use either a time period immediately preceding the crime, the tax year in which the crime occurred or the most recent tax year that ended prior to the year of the crime.

(h) If the direct victim or intervenor was not employed at the time of the crime, OVS may use employment history up to the 3 years immediately preceding the crime to estimate potential support that would have been provided to an eligible person.

(i) If more than one person is eligible for a loss of support award, OVS will allocate each a share of the total annual amount based on OVS's determination of fairness and equity under the circumstances of the claim.

(j) If the total uncompensated loss of support for two or more eligible persons exceeds the monetary limitations in the act, the limited resources will be distributed at the discretion of OVS proportionately among the eligible persons.

(k) OVS may provide a lump sum or accelerated payments for loss of support. The calculated maximum can be dispersed in one lump sum if extenuating circumstances necessitate, or under lesser conditions, paid out in a 3-year to 5-year payment plan. Also, if the total projected award is of a lesser amount, and extended yearly payments are impractical, the award will be paid in total in a single sum. In claims in which OVS make protracted payments into the future, the claimant is subject to a continuing obligation to provide information that OVS requests. Failure to provide this information when requested may result in the suspension of future payments or may require repayment of prior accelerated payments.

(l) The claimant or the recipient of a loss of support award has a continuing obligation to report to OVS any change in circumstances, such as if the recipient obtains a new source of support. In these circumstances, OVS may terminate or reduce protracted payments made under the original award.

(m) When an award for loss of support is paid to a person for the benefit of another person, OVS may require the payee to file a periodic accounting of OVS's payments or take other action as OVS may determine necessary and appropriate for the benefit of the beneficiary.

(n) As a condition for continuing receipt of loss of support benefits, OVS may require the claimant to file a claim for and pursue other benefits to which the claimant may be entitled to offset the loss of support benefits.

(o) At any time, OVS may reconsider and modify a future loss of support award previously issued or a protracted payment if another eligible person qualifies for a loss of support award.

(p) Gifts of property or money bestowed upon the dependent on special occasions may not be considered in making a determination of dependency.

MISCELLANEOUS

§ 411.51. Subrogation.

(a) Payment of an award made under the act shall subrogate the Commonwealth, to the extent of any payment, to any right of action against any person accruing to the claimant, the direct victim or the intervenor to recover losses resulting from the crime with respect to which the award is made. In such a case, the Commonwealth will be entitled to bring an action against the person causing or otherwise liable for the personal injuries or death for which the payment was made. Money recovered under this section shall be deposited in the Crime Victim's Compensation Fund established under the act.

(b) If an amount greater than that paid under the act is recovered and collected in such an action, the Commonwealth will pay the balance to the claimant. The Attorney General shall enforce any subrogation. A claimant who fails to notify OVS of the receipt of funds from another claim or award arising out of the crime shall forfeit and pay to the Commonwealth an amount equal to all awards paid by OVS to the claimant or on the claimant's behalf.

(c) The OVS has the discretion to settle subrogation claims for an amount less than the award. Unless good cause is shown by the claimant or claimant's attorney, under no circumstances will OVS settle subrogation claims for an amount that is less than 75% of the original award to the claimant. OVS reserves the right to assert further subrogation on additional recovery by the claimant. If the direct victim or intervenor incurs additional expenses related to the injury, the claimant must exhaust the actual insurance or civil recovery as well as the amount OVS reduced prior to receiving further payments from OVS.

§ 411.52. Representation by attorney.

(a) Title 1 of the *Pennsylvania Code*, Part II (relating to General Rules of Administrative Practice and Procedures) applies to the representation of a claimant by an attorney before OVS or in a hearing related to a claim submitted to OVS.

(b) If an attorney has filed a notice of appearance on behalf of the claimant, the notice shall remain in effect until one of the following occurs:

- (1) The claimant files with OVS a written revocation of the authority of the attorney.
- (2) The attorney files with OVS a written statement of withdrawal from the case.
- (3) The attorney makes a statement of withdrawal from the case on the record at a hearing.
- (4) OVS receives notice of the license suspension or revocation or the death of the attorney.

(c) During the period in which a notice of appearance filed under this section remains in effect, OVS may communicate with the attorney instead of the claimant. Service upon the attorney shall be deemed effective service upon the claimant.

(d) An attorney who represents a claimant before OVS may receive a fee for that representation only under the act. After OVS makes an award, the attorney may request that OVS pay attorney's fees and costs by filing with OVS an affidavit of services, listing the nature of each service rendered and the amount of time spent in rendering the service, plus an itemized list of costs incurred in the preparation, procuring and filing of record papers regarding the claim.

(e) In evaluating applications for attorney's fees, OVS will consider the following factors:

- (1) The time and labor required.
- (2) The novelty and difficulty of the questions.
- (3) The skill needed to perform the legal service properly.
- (4) Awards in similar claims.

(f) A payment for attorney's fees shall be in addition to the award made to the direct victim, claimant or intervenor, but may not exceed 15% of that award. OVS may not reduce an award to a direct victim on account of payment of attorney's fees.

(g) OVS may award no more than \$75 per hour to an attorney in the preparation and presentation of a claim that is awarded.

(h) It is unlawful for an attorney to contract for or receive a sum larger than the amount allowed.

(i) OVS may deny or reduce an award for attorney's fees if an attorney asserts a false claim as to the time spent on a matter concerning OVS or asserts a false claim as to the services rendered to a claimant. OVS may refer the matter to the Disciplinary Board of the Pennsylvania Supreme Court, the Attorney General or other appropriate authorities.

§ 411.53. Prohibitions.

(a) Providers who write off bills to a direct victim or intervenor may not at any point following the write off seek reimbursement from OVS, direct victim, claimant or intervenor.

(b) A funeral director who assumes the obligation to pay for funeral expenses may not seek reimbursement from the direct victim or intervenor's family.

(c) A person who assumes the obligation for crime scene clean up may not seek reimbursement from the direct victim or intervenor's family.

§§ 411.101—411.103. [Reserved].**Source**

The provisions of this §§ 411.101—411.103 adopted September 13, 2002, effective September 14, 2002, and applies to compensation claims relating to crime injuries occurring on and after August 27, 2002, 32 Pa.B. 4489; reserved April 13, 2007, effective April 14, 2007, 37 Pa. B. 1651. Immediately preceding text appears at serial pages (325315) to (325319).

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