

CHAPTER 7505

DEPARTMENT OF PUBLIC SAFETY

CRIME VICTIMS REPARATIONS BOARD

HEARING PROCEDURES

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7505.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 1a. **Adult.** "Adult" means a person who is 21 years of age or older.

Subp. 2. **Board.** "Board" means the Crime Victims Reparations Board.

Subp. 3. **Party.** "Party" means any claimant.

Subp. 4. [Repealed by amendment, 13 SR 661]

Subp. 5. **Witness.** "Witness" means a person who was present at the scene of a crime and personally saw or heard the crime.

Subp. 6. **Net income.** "Net income" means gross income minus federal, state, and social security taxes and any wage deductions for benefits or union dues.

Subp. 7. **Family or household members.** "Family or household members" means spouses, former spouses, parents, children, grandparents, siblings, persons who are presently residing together, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

Statutory Authority: *MS s 611A.56*

History: *13 SR 661; 16 SR 2025*

7505.0200 PURPOSE.

This chapter is intended to assure that no person before this board shall have his or her rights, privileges, or duties determined without regard to fundamental fairness.

Statutory Authority: *MS s 611A.56 subd 1 para (b)*

History: *13 SR 661*

7505.0300 LEGAL REPRESENTATION.

Any claimant, or any party in a contested case, may be represented by counsel throughout any proceedings before the board.

Statutory Authority: *MS s 611A.56*

7505.0400 COMMENCEMENT OF CLAIM.

A claim shall be deemed to have been commenced upon receipt by the board of a claim form completed and signed by a claimant or the claimant's representative.

Statutory Authority: *MS s 611A.56 subd 1 para (b)*

History: *13 SR 661*

7505.0500 [Repealed, 13 SR 661]

7505.0600 SCOPE OF DISCOVERY.

Subpart 1. **Information obtainable.** Pursuant to the investigation of a claim, the board may obtain from the claimant and other persons all information reasonably related to the validity of the claim, including but not limited to information relating to the following subjects:

- A. the occurrence of a crime;
- B. the extent of the claimant's economic loss;
- C. the extent to which collateral sources are available to the claimant;
- D. the extent to which the claimant, or the victim through whom the claim is made, has cooperated with law enforcement officials; and
- E. the extent to which the claimant, or the victim through whom the claim is made, has been guilty of contributory misconduct.

Subp. 2. **Subpoena.** In the course of an investigation the board may issue subpoenas for the appearance of witnesses or for the production of books, records, or other documents or initiate such other discovery proceedings as by law are allowed.

Statutory Authority: *MS s 611A.56 subd 1 para (b)*

History: 13 SR 661; 17 SR 1279

7505.0700 COOPERATION WITH BOARD, ASSIGNMENT, SUBROGATION.

Failure by a claimant or claimant's representative to complete forms, or otherwise to cooperate with the board's investigation, may constitute a ground for denial of a claim.

The claimant shall assign his or her rights to recover benefits or advantages from any source which is, or if readily available to the claimant would be, a collateral source and which is not deducted from the final award; provided that the assignment shall not exceed the amount of the final award. The claimant shall further agree to cooperate fully with the board in any subrogation action brought by the board or the claimant.

Statutory Authority: *MS s 611A.56 subd 1 para (b)*

History: 13 SR 661

7505.0750 BOARD DETERMINATION OF FULL COOPERATION.

Subpart 1. **Board finding of full cooperation.** The board, in determining whether a victim or claimant has fully cooperated with law enforcement and prosecutorial authorities, shall consider items A and B as necessary for an affirmative finding.

A. The victim or claimant, or, in the case of a minor, the parent or guardian of the victim or claimant, must have made a reasonable effort to comply with any specific and direct requests that law enforcement professionals made a reasonable effort to communicate to them.

B. The victim or claimant, or, in the case of a minor, the parent or guardian of the victim or claimant, must have cooperated from the time the crime was reported, during the entire time the investigation remains active, and through all prosecution proceedings.

Subp. 2. **Ability to cooperate.** The board may not deny benefits on the basis that the victim or claimant did not fully cooperate unless the board finds that the victim or claimant was able to cooperate at the time the cooperation was requested. In determining whether a victim or claimant was able to cooperate, the board shall consider physical or mental impairments or disabilities that might have affected the victim or claimant's ability to respond to the requests.

Statutory Authority: *MS s 611A.56*

History: 16 SR 2025

7505.0800 [Repealed, 13 SR 661]

7505.0900 [Repealed, 13 SR 661]

7505.1000 [Repealed, 13 SR 661]

7505.1100 [Repealed, 13 SR 661]

7505.1200 [Repealed, 13 SR 661]

7505.1300 [Repealed, 13 SR 661]

7505.1400 [Repealed, 13 SR 661]

7505.1500 [Repealed, 13 SR 661]

7505.1600 [Repealed, 13 SR 661]

7505.1700 [Repealed, 13 SR 661]

7505.1800 [Repealed, 13 SR 661]

7505.1900 DISQUALIFICATION BY PREJUDICE.

A hearing officer or any board member shall withdraw from participation in a contested case at any time prior to the final determination if he or she deems himself or herself disqualified for any reason. Upon the filing in good faith of a timely and sufficient petition of prejudice the hearing officer shall determine the matter as a part of the record and decision in the case. A withdrawal must be noted in the minutes of the board's monthly meetings.

Statutory Authority: *MS s 611A.56 subd 1 para (b)*

History: *13 SR 661*

7505.2000 [Repealed, 13 SR 661]

7505.2100 [Repealed, 13 SR 661]

7505.2200 [Repealed, 13 SR 661]

7505.2300 [Repealed, 13 SR 661]

7505.2400 [Repealed, 13 SR 661]

7505.2500 [Repealed, 13 SR 661]

7505.2600 CRIMINAL PROSECUTION.

Nothing contained in this chapter is intended to preempt or repeal the board's power to suspend or postpone the proceedings on a claim if a criminal prosecution arising out of the incident which is the basis of the claim has been commenced or is imminent.

Statutory Authority: *MS s 611A.56*

7505.2700 TREATMENT PLANS.

Subpart 1. **Applicability.** The board, in order to evaluate the reasonableness of treatment provided claimants, shall require suppliers of mental health, physical therapy, chiropractic, medical, and home care services to submit treatment plans before consideration of their charges as a part of a reparations claim when the following time and charges standards apply:

A. if mental health treatment is likely to continue longer than six months after the date the claim is filed and the cost of the additional treatment will exceed \$1,500, or if the total cost of treatment in any case will exceed \$4,000;

B. if physical therapy treatment is likely to continue longer than three months after the date the claim is filed and the cost of additional treatment will exceed \$800, or if the total cost of treatment in any case will exceed \$1,500;

C. if chiropractic treatment is likely to continue longer than three months after the date the claim is filed and the cost of additional treatment will exceed \$1,000, or if the total cost of treatment in any case will exceed \$1,800;

D. if medical treatment for a single condition or injuries resulting from a single incident is likely to continue longer than three months after the date of injury and the cost of additional treatment will exceed \$2,500, or if the total cost of treatment in any case will exceed \$4,000; or

E. if licensed home care service, as defined in Minnesota Statutes, section 144A.43, if more than five home visits in total have been or will be delivered, regardless of cost.

The board may request treatment plans for other services provided to the victim if the total cost of the service exceeds \$500.

Subp. 2. Treatment plan contents. Treatment plans must include, but not be limited to, information concerning the date treatment began and the actual or expected date of termination, the diagnosis of record, measurable treatment goals, and the proposed method for treatment including measurable outcomes, information regarding preexisting conditions, and prognosis.

Subp. 3. Submission procedures. Forms for the submission of treatment plans must be provided by the board. Forms will be supplied at the time the board requests certification of charges for treatment provided a claimant. Suppliers shall submit treatment plans, where required by subpart 1, at the time the certificate is returned to the board.

Subp. 4. Treatment plan updates. Treatment plans must be revised to reflect current treatment status after the first six months of treatment for which the board has provided compensation and quarterly after that. The board may withhold or deny benefits for failure to submit revisions as required in this subpart.

Subp. 5. Board action. The board may use treatment plans to aid in the determination of reasonableness of care, and may grant or deny compensation for a specific service based upon information submitted in a treatment plan. The board may also request a provider of services to revise or restate information provided in order to meet the board's requirements for compensation.

Subp. 6. Extension beyond termination dates. If treatment is likely to continue more than 30 days beyond the projected date of termination submitted in the treatment plan, the provider is responsible for submitting a new treatment plan and a revised termination date. A revision must be considered by the board at its regular monthly meeting. No compensation must be authorized for services rendered more than 30 days beyond a projected termination date without board approval of an extension.

Statutory Authority: *MS s 611A.56 subd 1 para (b)*

History: *13 SR 661*

7505.2800 BOARD DETERMINATION OF REASONABLENESS.

Subpart 1. Board consideration. The board, in determining reasonableness, shall consider any and all of the following relative to a specific claim, or to a claim for compensation for a specific service:

- A. quantity of service proposed or provided;
- B. time span and duration of actual or proposed service;
- C. adherence of service provider to professional standards, with consideration to ethnic and cultural needs of a claimant;
- D. progress of treatment against standards presented to the board in the professional treatment plan, where a plan has been submitted;
- E. relationship of provider to claimant; and
- F. possible consequences of denial or reparations.

Subp. 2. Utilization review. Where the board is unable, due to multiple caregivers or complex treatment issues, to determine reasonableness, it may use the services of outside experts to assist in a determination. This review shall include, but is not limited to:

- A. review of clinical records;
- B. submission of a questionnaire to the claimant to elicit specific information; and
- C. interview or examination of the claimant.

Statutory Authority: *MS s 611A.56 subd 1 para (b)*

History: *13 SR 661*

7505.2900 CONTRIBUTORY MISCONDUCT.

The board shall reduce, by a minimum of 25 percent, any claim submitted by or on behalf of a person who the board finds has engaged in any of the following acts or behavior that contributed to the injury for which the claim is filed:

- A. used fighting words, obscene or threatening gestures, or other provocation;
- B. knowingly and willingly been in a vehicle operated by a person who is under the influence of alcohol or a controlled substance;
- C. consumed alcohol or other mood altering substances; or
- D. failed to retreat or withdraw from a situation where an option to do so was readily available.

Any of these provisions may be waived in cases of domestic abuse or sexual assault.

Statutory Authority: *MS s 611A.56 subd 1 para (b)*

History: *13 SR 661*

7505.3000 [Repealed, 17 SR 2284]

7505.3100 LOSS OF SUPPORT.

Subpart 1. **Determination of amount.** To calculate compensation for the loss of support to a dependent of a deceased victim, the board must take the monthly net income of the victim and divide it by the number of surviving dependents. This amount must be decreased by payments received from collateral sources by the dependent, including social security and AFDC benefits. If the victim's dependents are eligible for social security benefits as a result of the victim's death, then the monthly amount which the board may pay to each dependent must not exceed the monthly rate the dependent is eligible to receive from the Social Security Administration.

Subp. 2. **Employed spouse.** If the victim's spouse was employed at the time of the crime, the amount of loss of support to be paid to the spouse shall be reduced by a percentage equal to the spouse's income divided by the total income of the victim and the spouse.

Subp. 3. **Net income.** The board shall determine the net income of the victim using the following:

A. net income of the deceased during the previous 12 months as documented by tax returns, W-2's, employer records, signed contracts or receipts, or other government agency records;

B. the total amount of other government benefits received by the victim, including AFDC payments, food stamps, and housing grants; and

C. if the claimant and the victim were divorced, court-ordered child support and alimony payments in the monthly amount that the victim had been ordered to pay.

Subp. 4. **Three-year review.** The board shall review a claim for loss of support every three years to determine whether the claimant is still eligible for benefits. The board shall evaluate the claim giving consideration to the claimant's financial need and to the availability of funds to the board. If the claimant's gross annual income is more than 185 percent of the federal poverty level, the claimant is not considered to have a continuing financial need.

Statutory Authority: *MS s 611A.56*

History: *16 SR 2025; 17 SR 2284*

7505.3200 LOSS OF INCOME.

Subpart 1. **Computation of lost income: employed victim.** If the victim was employed at the time of the crime for which the claim is filed, the board shall compute lost income using a certification of lost wages provided by the victim's employer at the time of the crime for which a claim has been filed.

Income to be replaced must be calculated at a rate which equals the victim's net income at the time of the crime for which the claim has been filed. If a certification of lost wages is unavailable, the board shall compute lost income as indicated in subpart 2.

Subp. 2. **Computation of lost income: victim self-employed or unemployed.** If the victim was self-employed or unemployed at the time of the crime for which the claim has been filed, loss of income must be calculated at a rate which is based upon the victim's average net income in the 12 months before the crime for which the claim was filed as evidenced by tax returns, W-2 forms, check stubs, signed contracts or receipts, or other government agency records.

If the victim has not filed tax returns for the year before the crime, the victim's net income is presumed to be no greater than the maximum yearly income for which no federal or state income tax filing is required.

Subp. 2a. Estimated tax. If the tax rate cannot be determined from the information received by the board under subpart 1 or 2, the board shall estimate the tax at a rate of 15 percent for victims with a gross annual income less than \$20,000 and 25 percent for victims with a gross annual income greater than \$20,000.

Subp. 3. Proof of inability to work. If necessary to determine the extent of disability and the length of compensation for lost income, the board shall request that the victim provide a statement from a licensed physician or psychologist indicating that the victim is or was unable to work due to injuries sustained as a result of the crime for which the victim has filed a claim.

The board shall withhold payment for loss of income if a statement has been requested and not received.

Subp. 4. Paid leave. The board must not pay for lost wages covered by a claimant's accumulated sick leave, vacation leave, compensatory time, or holiday pay.

Statutory Authority: *MS s 611A.56*

History: *16 SR 2025; 17 SR 2284*

7505.3300 PAYMENT BENEFITING OFFENDER.

Subpart 1. Domestic abuse; clarification. The board shall determine the eligibility of claims for injuries sustained as the result of domestic abuse in the same manner as other claims. No claim resulting from an incident of domestic abuse may be denied based solely upon a finding that a claimant resides or has resided with the alleged offender of the crime for which the claim has been filed. The board shall not reduce or deny an award when enrichment of the offender is inconsequential or minimal. The board shall not deny payments to service providers based upon a finding that the claimant and offender are maintaining a relationship.

Subp. 2. Claim denial. No claim may be denied because it succeeds previous claims for victimization by the same offender.

Statutory Authority: *MS s 611A.56*

History: *16 SR 2025*

7505.3400 SECONDARY VICTIMS.

For the purposes of this chapter, the term "victim" includes, in addition to those meanings specifically provided in Minnesota Statutes, section 611A.52, the following:

A. a parent, spouse, or minor child of a victim who died as the direct result of a crime;

B. a witness to a violent crime who suffered physical or emotional injury. Payment for a witness is limited to ten counseling sessions;

C. a sibling or adult child of a victim who died as the direct result of a crime, if the sibling or child has suffered emotional injury. Payment for a sibling or adult child is limited to ten counseling sessions; and

D. a person who discovered the body of a victim who died as the direct result of a crime, if the person has suffered emotional injury. Payment for a person who discovered a body is limited to ten counseling sessions.

Statutory Authority: *MS s 611A.56*

History: *16 SR 2025; 17 SR 2284*

7505.3500 PARENTS OF CHILD VICTIMS.

The board shall authorize payment for up to five counseling sessions for a parent who is a primary caretaker of a victim of domestic child abuse or child sexual assault, if the treatment plan filed under and complying with part 7505.2700 indicates that the sessions directly benefit the victim.

When home health care is needed by a victim who is less than 21 years old and when a determination is made that a parent of the victim is an appropriate person to provide care to

the victim, the board shall authorize payment to the parent of \$10 an hour for up to eight hours per day to reimburse the parent for care which is provided. Total payment to a parent under this provision must not exceed \$2,000.

Statutory Authority: *MS s 611A.56*

History: *16 SR 2025; 17 SR 2284*

7505.3600 HOUSEHOLD SERVICES.

The board shall not award reparations for household services performed by a family or household member.

Statutory Authority: *MS s 611A.56*

History: *16 SR 2025*

7505.3700 COST CEILING ON HOSPITAL AND PHYSICIAN EXPENSES.

Within 30 days of the beginning of each fiscal year, the board shall determine the percentage of hospital and physician expenses to be paid on all claims submitted for crimes occurring during that fiscal year. The board shall consider the availability of funds to the board when setting the percentage it will pay. The board must not pay more than this percentage of a victim's total hospital and physician expenses after payment by collateral sources. Acceptance of payment for medical services from the Minnesota Crime Victims Reparations Board shall be considered acceptance of payment in full and bars any legal action against the victim for collection.

Statutory Authority: *MS s 611A.56*

History: *17 SR 2284*

7505.3800 MENTAL HEALTH TREATMENT RATE LIMITS.

The board must not pay more than \$75 an hour for individual mental health therapy nor more than \$40 an hour for group mental health therapy.

Statutory Authority: *MS s 611A.56*

History: *17 SR 2284*

7505.3900 MAXIMUM PAYMENT FOR SEXUAL ASSAULT EVIDENTIARY EXAMINATION.

The board must not pay more than \$500 for a sexual assault evidentiary examination. Any payment by the county for the examination shall be deducted from that \$500 and the board must not pay more than the remaining amount.

Statutory Authority: *MS s 611A.56*

History: *17 SR 2284*

7505.4000 MAXIMUM PAYMENT FOR CHILD CARE.

When a claim for substitute child care is submitted, the board must not pay more than \$250 per week for substitute child care for one child nor more than \$350 per week for two or more children.

Statutory Authority: *MS s 611A.56*

History: *17 SR 2284*