

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 262 Department or Agency Crime Victims Compensation Commission
Rule No. 262-X-4.04
Rule Title: Compensation Awards - Amounts and Methods of Payment.
 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? yes

Is there another, less restrictive method of regulation available that could adequately protect the public? no

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? no

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? n/a

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? no

Does the proposed rule have an economic impact? yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer  Everette L. Johnson

Date 7.13.2023

REC'D & FILED

JUL 13 2023 (DATE FILED)
(STAMP)

LEGISLATIVE SVC AGENCY

ALABAMA CRIME VICTIMS COMPENSATION COMMISSION

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 262-X-4-.04, Compensation Awards - Amounts and Methods of Payment.

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION: The Commission proposes to amend the existing rule to simplify information, remove outdated information, and remove 20% deduction for income tax during the calculation of a self-employed claimant's/victim's lost wages.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing to the Alabama Crime Victims Compensation Commission, Post Office Box 231267, Montgomery, Alabama 36123-1267 or oral comments at 334.290.4420.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written comments shall be received until the close of record at 5:00 p.m. on September 6, 2023. All comments should be addressed to the contact person listed below.

CONTACT PERSON AT AGENCY: Kim Martin, General Counsel, Alabama Crime Victims Compensation Commission, Post Office Box 231267, Montgomery, Alabama 36123-1267 or oral comments at 334.290.4420.

RULE FILING MORATORIUM EXCEPTION: Remove obsolete, outdated, or unnecessary rules.


Everette L. Johnson
Executive Director

262-X-4-.04 Compensation Awards - Amounts and Methods of Payment.

(1) Compensation payable to a victim or claimant sustaining economic loss due to injury or death may not exceed a total of fifteen thousand dollars (\$15,000.00). ~~For incidents of criminally injurious conduct occurring on or after October 1, 2014, through July 8, 2020, compensation payable to a victim or claimant sustaining economic loss due to injury or death may not exceed a total of twenty thousand dollars (\$20,000). For incidents of criminally injurious conduct occurring on or after July 9, 2020, compensation payable to a victim or claimant sustaining economic loss due to injury or death may not exceed a total of fifteen thousand dollars (\$15,000.00).~~

(2) Compensation for lost wages may not exceed four hundred (\$400.00) dollars per week. ~~For incidents of criminally injurious conduct occurring on or after October 1, 2014, through July 8, 2020, compensation for lost wages may not exceed six hundred (\$600.00) dollars per week. For incidents of criminally injurious conduct occurring on or after July 9, 2020, compensation for lost wages may not exceed four hundred (\$400.00) dollars per week.~~

(3) The Commission may provide for the payment to a claimant in a lump sum or installments. Outstanding eligible expenses will be paid directly to the service provider. Compensation payable to service providers for medical treatment may be compensated at a reduced rate. Outstanding charges for medical treatment, excluding psychiatric care, counseling, and dental treatment, may be compensated at a reduced rate of thirty percent (30%) of eligible charges up to a maximum amount of six thousand dollars (\$6,000). When the claimant has already paid out-of-pocket for medical treatment and services, the claimant may be fully reimbursed for all eligible expenses not to exceed \$15,000.

(4) Future Economic Loss.

~~(a) For incidents of criminally injurious conduct occurring on or after October 1, 2014, through July 8, 2020, the maximum award for future economic loss is \$20,000 per claim. For incidents of criminally injurious conduct occurring on July 9, 2020, through March 10, 2021, the maximum award for future economic loss is \$15,000 per claim. For incidents of criminally injurious conduct occurring on or after March 11, 2021, future Future economic loss is limited to \$400.00 per week for a maximum of 26 weeks. Future economic loss may be awarded if the victim was employed at the time of his/her victimization and the employment is verifiable.~~

(b) If the deceased victim leaves a dependent spouse and no dependent children, the total amount of the future economic loss may be paid to the dependent spouse.

(c) If the deceased victim leaves a dependent spouse and a dependent child or dependent children and the dependent spouse is the parent of all the victim's dependent children, then the total amount of the future economic loss may be paid to the dependent spouse for the benefit of himself/herself and the dependent child or dependent children.

(d) If the deceased victim does not leave a dependent spouse, but leaves dependent children, funeral/burial expenses may be paid prior to the payment of future economic loss for a dependent child or dependent children. After the payment of funeral/burial expenses, twenty-five percent (25%) of the remaining compensation benefits may be used for the compensation of the claimant's eligible expenses. The remaining compensation benefits will be apportioned equally among the dependent children for whom a request for future economic loss is made within the one-year filing deadline. Dependent children who request

future economic loss after the one-year filing deadline may not receive compensation benefits. If there are compensation funds remaining after the one-year filing deadline, they may be equally apportioned and distributed to the deceased victim's dependent children who made a request for future economic loss prior to the expiration of the one-year filing deadline.

(e) If the deceased victim leaves a dependent spouse and a dependent child or dependent children for whom the parent or legal guardian is someone other than the dependent spouse, funeral/burial expenses may be paid prior to the payment of future economic loss for a dependent child or dependent children. After the payment of funeral/burial expenses, fifty percent (50%) of the remaining compensation benefits may be used for the compensation of the dependent spouse's eligible expenses. The remaining compensation benefits will be apportioned equally among the dependent children for whom a request for future economic loss is made within the one-year filing deadline. Dependent children who request future economic loss after the one-year filing deadline may not receive compensation benefits.

(f) Legal proof that the dependent spouse was married to the deceased victim at the time of the victim's death will be requested. Legal proof that a dependent child was the legal child of the deceased victim will be requested. For example: marriage certificate, birth certificate, or court order.

- 1) A claimant that asserts a common-law marriage with a deceased crime victim must provide proof of the marriage by submitting one of the following:
 - a) an official Internal Revenue Service tax transcript indicating the claimant and deceased victim filed as married; or
 - b) affidavits from three blood relatives within the second degree of consanguinity of the deceased crime victim swearing that the claimant and the deceased crime victim presented themselves as married to each other. If the deceased crime victim does not have three blood relatives within the second degree of consanguinity, the claimant may submit an affidavit or affidavits from blood relatives within the third degree of consanguinity. If the deceased crime victim does not have three blood relatives within the third degree of consanguinity, the claimant may submit an affidavit or affidavits from blood relatives within the fourth degree of consanguinity. Birth certificates must be submitted to prove the relationship of the affiant to the deceased crime victim.
 - i) First-degree relatives include a crime victim's parents and children.
 - ii) Second-degree relatives include a crime victim's siblings and half-siblings.
 - iii) Third-degree relatives include a crime victim's nieces, nephews, aunts, and uncles.
 - iv) Fourth-degree relatives include a crime victim's first cousins, great aunts, great uncles, grandnieces and grandnephews.

(g) All awards for future economic loss shall be diminished or denied to the extent that the future economic loss is recouped from a collateral source.

(h) At the discretion of the Commission, future economic loss may be paid in a lump sum, but only upon a finding that the lump sum award will promote the best interest of the claimant.

(i) When the Commission determines that compensation for future economic loss will be paid in installments, payments may be made in quarterly installments of \$2,500 over a period of one year or until the total compensation award for future economic loss is paid to the recipient(s). The one-year period for the purpose of installment payments will begin the day the compensation award is approved. An award payable in installments for future economic loss may be modified by the Commission upon its finding that a material and substantial change of circumstances has occurred.

(5) No more than five thousand dollars (\$5,000.00) may be paid for expenses related to funeral, cremation, or burial. For incidents of criminally injurious conduct occurring on or after October 1, 2014, through July 8, 2020, no more than seven thousand dollars (\$7,000.00) may be paid for expenses related to funeral, cremation, or burial. For incidents of criminally injurious conduct occurring on or after July 9, 2020, no more than five thousand dollars (\$5,000.00) may be paid for expenses related to funeral, cremation, or burial. Food expenses shall not be considered expenses related to funeral, cremation, or burial.

(a) The following payment limitations for funeral, cremation, and burial expenses apply:

1. \$1,000 maximum award for victim's headstone;
2. \$250 maximum award for funeral flowers;
3. \$200 maximum award for burial clothes for the victim.

(6) Approved claims will be paid in the order of their approval by the Commission as funds become available.

(7) Payments may be made in lump sums or in installments.

(8) Lost wages shall be verified by obtaining written documentation from the employer or by submission of a W2 tax document. A tax transcript from the IRS is required if the person seeking reimbursement of his/her lost wages is self-employed ~~or the employer indicated that taxes are not deducted from the person's wages. Proof must be provided that the person seeking reimbursement of his/her lost wages paid federal and state income taxes for the period of time applicable to the requested lost wages.~~

(9) The claimant may, with the Commission's approval, elect to be paid for lost wages, future economic losses, replacement services loss, etc., before the service providers are paid.

(10) Annual leave, sick leave, personal leave or holidays shall not be considered a collateral source and may be reimbursed by the Commission.

(11) Lost Wages.

(a) The victim's work loss caused by the crime may be considered for reimbursement.

(b) The claimant or immediate family member may apply for his/her lost wages if he/she took time off from work to care for the victim if the victim was a minor, or a medical professional provides written confirmation that the care was recommended.

(c) If the victim died as a result of the crime, the victim's dependent spouse and dependent children may apply for future economic loss.

(d) Anticipated work may be considered for compensation when accompanied by documentation certifying a definite start date.

(e) The victim's, claimant's, and immediate family members' lost wages may be awarded for work loss due to receiving medical treatment as a result of the crime; mental health treatment as a result of the crime; attendance of grand jury proceedings for three days if not subpoenaed; attendance of grand jury proceedings for as many days as required by subpoena, attendance of the offender's preliminary hearing, arraignment, bond hearing, a hearing on any pretrial motion, trial, or any post judgment proceeding; and the offender's parole hearing.

(f) Proper documentation is required for consideration of all lost wages requests, including, when applicable: confirmation of court attendance; a parole notification letter; employer's confirmation of work loss; a self-employment affidavit; or a written excuse from a licensed medical professional or licensed mental health provider.

(12) Lost Wages Payment Limitations.

(a) For incidents of criminally injurious conduct occurring on or after October 1, 2014, through July 8, 2020, lost wages are limited to \$600.00 per week for a maximum of 52 weeks. For incidents of criminally injurious conduct occurring on or after October 1, 2014, through July 8, 2020, the maximum award for lost wages is \$20,000. For incidents of criminally injurious conduct occurring on or after July 9, 2020, lost wages are limited to \$400.00 per week for a maximum of 26 weeks.

~~(b) When computing lost wages, twenty percent (20%) will be deducted from the gross amount to reflect income tax and other deductions that would have been subtracted from the earnings.~~

(c) Life insurance shall be considered a collateral source for all claims. If life insurance does not fully compensate the deceased victim's dependents for the eligible expenses they incurred as a result of the victimization, the remaining eligible expenses may be eligible for compensation.

(13) Collateral Source.

a. Life insurance shall be considered a collateral source for compensation.

b. When determining if a collateral source has fully compensated a victim or a deceased victim's dependent, a one-year period of a victim's lost wages or other income will be used for calculation of the collateral source offset.

(c). Charitable donations shall not be considered a collateral source for compensation. If an eligible expense has been paid with charitable donations, the Commission will not reimburse the expense. The Commission only provides compensation benefits for payment or reimbursement of actual expenses.

(14) Moving and Temporary Relocation Expenses

(a) The Commission may award moving expenses in cases in which the crime occurred in the victim's home, the victim has a reasonable fear for his/her life if he/she does not move from the home, or moving the victim's personal belongings is necessary. Written estimates and/or receipts are required for payment of moving expenses.

(b) The Commission may award temporary relocation expenses when the victim's home has been temporarily made uninhabitable as a direct result of the crime. Claimants/victims who qualify for temporary relocation expenses may receive per diem at a rate of \$100. If the size of the claimant's/victim's family necessitates the rental of two hotel rooms or larger accommodations, the Commission may consider awarding more than per diem for the temporary relocation expense. A copy of the hotel bill, credit card receipt, or other verifiable document is required for verification.

(c) Moving and temporary relocation expenses may not exceed a combined total \$1,000.

(15) Travel Expenses.

(a) The maximum award for travel expenses is \$3,000. Airline tickets or mileage at the Internal Revenue Service's standard mileage rate and a \$100 per diem rate and lost wages may be provided for eligible travel expenses. Hotel receipts must be supplied in order to award \$100 per diem. Airfare will be reimbursed at coach rates only. Travel expenses for the victim, immediate family member(s), or person(s) of the victim's choosing, may be awarded to attend grand jury proceedings for three days if not subpoenaed, grand jury proceedings for as many days as required by subpoena, the offender's preliminary hearing, arraignment, bond hearing, a hearing on any pretrial motion, trial, or any post judgment proceeding. When the victim is deceased, travel may be awarded to immediate family members. Travel may be allowed for immediate family members to travel attend the offender's trial or any post judgment proceeding. When the prosecutor's office or any other entity pays for all or part of the victim's or immediate family member's travel expenses, that amount shall be deducted from the compensation award for travel expenses. Travel may be allowed for medical and psychological treatment that is needed as a result of the victimization. Travel required to procure needed services may be considered for the victim, claimant, and immediate family members.

(b) Travel expenses and lost wages for the victim, immediate family member(s), or person(s) of the victim's choosing, may be awarded for attendance of the offender's parole hearing. When the victim is deceased, travel expenses and lost wages may be awarded to immediate family members or victim representatives. Eligible parole travel expenses shall be reimbursed at the current Internal Revenue Service's standard mileage rate, coach rate for airfare, and per diem at a rate of \$100.

These requests will only be considered as a supplemental to an original claim. (There must be a timely, approved compensation claim for parole travel expenses to be considered. The Commission will not consider parole travel expenses filed as an original claim.) 262-X-4-.04 (15)(b) shall be retroactive to the date of the Commission's inception.

(c) Travel expenses for immediate family members to attend the victim's funeral may be considered for reimbursement. The Commission may award up to seven days of per diem for funeral travel. Eligible funeral travel expenses may be reimbursed at the current Internal Revenue Service's standard mileage rate, coach rate for airfare, and per diem at a rate of \$100.

(d) To qualify for reimbursement for mileage, the destination must be greater than ten miles from the home (or travel starting point) of the person requesting compensation.

(e) Rental Cars. When the person requesting compensation has rented an automobile for eligible travel expenses, the person may be reimbursed for mileage or a daily rental car fee of \$35. Under no circumstances shall the requesting person receive both.

Mileage will be reimbursed at the current Internal Revenue Service's standard mileage rate.

(16) The Commission does not provide property reimbursement or replacement.

1) Security enhancement. Windows and locks for real property owned by the claimant/victim; and windows and locks for rental property leased by the claimant/victim when the claimant/victim is financially responsible for repair(s) to the leased property.

2) Prescription eyeglasses. The maximum award for damaged prescription eyeglasses is \$350. A receipt/estimate must be provided for the eyeglasses.

(17) Exclusion from Payment. The following expenses shall not be eligible for compensation:

a) Any expense related to the prosecution of the criminal case. (Examples: expert testimony and witnesses; DNA testing and analysis; evidence photographs and videos; blood samples and travel expenses for witnesses subpoenaed to testify.)

b) All legal fees shall be excluded from payment except legal fees incurred to establish a legal guardian for the victim as defined by Alabama Administrative Code (ACVCC) 262-X-4-.04(22).

(18) Replacement services loss may not exceed four hundred (\$400.00) dollars per week. For incidents of criminally injurious conduct occurring on or after October 1, 2014, through July 8, 2020, compensation for replacement services loss may not exceed six hundred (\$600.00) dollars per week. For incidents of criminally injurious conduct occurring on or after October 1, 2014, through July 8, 2020, replacement services loss is limited to a maximum of 52 weeks. For incidents of criminally injurious conduct occurring on or after July 9, 2020, replacement services loss may not exceed two hundred (\$200.00) dollars per week for a maximum of 26 weeks.

(19) Supplemental awards: The expenses submitted in the supplemental claim must be related to the original injury and must be supported by documentation.

(20) Checks issued by the ACVCC may contain the following language: "Cashing this check constitutes payment in full." This shall not be construed to apply to future compensation benefits for which the victim/claimant may be eligible. It shall be the responsibility of the victim/claimant to assert this defense in any type of collection proceeding against him/her. If the service provider refuses the check, the compensation shall be paid directly to the victim/claimant.

(21) When a victim/claimant is approved for charity by a service provider, the charity approval shall be considered a collateral source and compensation shall not be paid to the service provider.

(22) When the claimant must seek legal guardianship of a minor and/or disabled victim to qualify for crime victims' compensation benefits, the Commission may consider reimbursement of legal fees incurred for obtaining guardianship. The maximum that may be awarded for legal

fees is \$1,000. Legal fees incurred for any reason other than obtaining guardianship shall not be eligible for reimbursement. The Commission shall not reimburse legal fees if the claimant is not granted guardianship of the victim.

(23) Bereavement Leave. Bereavement leave may only be granted to the victim's immediate family members. A victim's immediate family member may be granted compensation for a maximum of four weeks of lost wages without a doctor's excuse. A doctor's excuse must be provided for lost wages in excess of four weeks to be considered for reimbursement. Employer verification is required for all bereavement leave requests.

(24) Crime Scene Clean-Up. The Commission may provide compensation to an individual or to the service provider if the expense is outstanding, for the reasonable costs to clean the scene of the crime in an amount not to exceed \$2,500. The service provider must be certified, licensed, and in compliance with all applicable federal and state regulations. Crime scene clean-up expenses may only be awarded for the cleaning and removal of biohazards.

(25) Birth Certificates. Reimbursement may be provided for one certified copy of the claimant's and/or victim's birth certificate(s) obtained after the date of the criminally injurious conduct made the basis of the claim. The birth certificate(s) must have been obtained for the purpose of applying for crime victims' compensation benefits.

(26) Government-Issued Photo Identification. Reimbursement may be provided for one state-issued driver's license or one state-issued non-driver's ID obtained after the date of the criminally injurious conduct made the basis of the claim.

(27) Reimbursement may be provided for certified victims of human trafficking and all qualified victims of violent crime for the removal/cover-up of tattoos that were physically forced on them by the alleged offender in the incident made the basis of the compensation claim. The Commission shall decide reasonable reimbursement on a case-by-case basis. The provider must be licensed by the appropriate governmental body to perform the service rendered to qualify for payment/reimbursement.

(28) Lost Wages for Victims of Sexual Assault. A victim of sexual assault may be granted compensation for a maximum of two weeks of lost wages without a doctor's excuse. A doctor's excuse must be provided for lost wages in excess of two weeks to be considered for reimbursement. Employer verification is required for all lost wages requests.

(29) Payment to Non-Claimants. A claimant may assign compensation benefits to a person for allowable expense to the extent that the compensation benefits are for the cost of products, services, or accommodations necessitated by the criminally injurious conduct made the basis of the claim. The claimant must submit a completed Permission for Another Individual to Receive Payments on a Limited Basis form for payment to be issued to the person who incurred the expense.

Author: Everette L. Johnson

Statutory Authority: ALA. CODE § 15-23-5(14)

History: Filed July 13, 2023

ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))

Control No. 262 Department or Agency Crime Victims Compensation Commission

Rule No: 262-X-4-.04

Rule Title: Compensation Awards - Amounts and Methods of Payment.

 New X Amend Repeal Adopt by Reference

 This rule has no economic impact.

 X This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

This rule will assist victims of violent crime by removing the 20% deduction for income tax previously used in the calculation of applicants' lost wages. It also simplifies information and removes outdated information.

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

It will provide additional assistance to eligible victims of violent crime.

3. EFFECT OF THIS RULE ON COMPETITION:

No effect.

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

No effect.

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

No effect on employment, it is only promulgated to assist victims of violent crime.

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

Court-ordered fines, fees, restitution, and General Fund appropriation. Federal grant money will also be used.

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

It will provide additional financial assistance to crime victims and benefit them by providing additional resources to qualified applicants.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

No uncertainties are foreseen or anticipated.

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

It improves the public health by providing additional benefits to crime victims.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

There would be less benefits available to victims of violent crime.

****Additional pages may be used if needed.**