APA-3
7/04

CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE REFERENCE SERVICE
JERRY L. BASSETT, DIRECTOR

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on the 7th day of October, 20 14, and filed with the agency secretary on the 7th day of October, 20 14.

AGENCY NAME: Alabama Crime Victims' Compensation Commission

X Amendment _____ New _____ Repeal (Mark appropriate space)

Rule No. 262-X-4-.04
(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

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

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

The rule was adopted without changes from the proposal.

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XXXII, ISSUE NO. 11, AAM, DATED August 29, 20 14.

Statutory Rulemaking Authority: Ala. Code § 15-23-5(14)(1995)

(Date Filed)
(For LRS Use Only)

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OCT 07 2014
LEGISLATIVE REF SERVICE

Cassie T. Jones
Certifying Officer or his or her Deputy **Cassie T. Jones, Ed.D.**
Executive Director

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.

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, 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).

(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, compensation for lost wages may not exceed six hundred ($600.00) dollars per week.

(3) (a) The Commission may provide for the payment to a claimant in a lump sum or installments or the Commission may choose to make payments directly to the service provider. Compensation payable to service providers for medical treatment shall be compensated at a reduced rate. Outstanding charges for medical treatment, excluding psychiatric care, dental treatment and counseling, shall be compensated at a reduced rate of fifty percent (50%) for eligible charges up to a maximum amount of seven thousand five hundred dollars ($7,500). For incidents of criminally injurious conduct occurring on or after October 1, 2014, outstanding charges for medical treatment, excluding psychiatric care, dental treatment and counseling, shall be compensated at a reduced rate of fifty percent (50%) for eligible charges up to a maximum amount of ten thousand dollars ($10,000). When the victim/claimant has already paid out-of-pocket for medical treatment and services, the victim/claimant shall be fully reimbursed for all eligible expenses.
(b) Advance payment for medical services may be paid at 100% of eligible charges when the victim/claimant cannot receive medical treatment and services without advance payment. The total advance payment for the medical treatment or service shall not exceed fifty percent (50%) of the maximum compensation available. The maximum award for medical expenses is seven thousand five hundred dollars ($7,500). For incidents of criminally injurious conduct occurring on or after October 1, 2014, the maximum award for medical expenses is ten thousand dollars ($10,000).

(4) Future Economic Loss.

(a) The maximum award for future economic loss is $5,000 per claim. For incidents of criminally injurious conduct occurring on or after October 1, 2014, the maximum award for future economic loss is $20,000 per claim. Future economic loss may only be awarded in instances in which the victim's loss of future earning capacity is verifiable through his/her employment history. Future economic loss may be awarded in the following circumstances:

(1) The victim was employed at the time of his/her victimization and the employment is verifiable;

(2) The victim was not employed at the time of his/her victimization but worked at least sixty-five weeks in the 104 weeks preceding victimization and the employment is verifiable. When there is proof the victim suffered an injury or illness during the 104 week period that prevented him/her from working, future economic loss may be considered when it is verifiable that the only reason the victim did not work sixty-five weeks was due to the injury/illness.

(b) 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.

(c) 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.

(d) An award payable in installments for future economic loss may be made only for a period as to which the Commission can reasonably determine future economic loss. 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, no more than seven thousand dollars ($7,000.00) may be paid for expenses related to funeral, cremation, or burial.

(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 may be considered for the victim, claimant and immediate family members at a prorated amount. If the victim was not employed but is now disabled as a result of the crime, the claimant may apply for his/her lost wages only if the claimant took time from work to care for the victim. If the victim died as a result of the crime, the claimant may apply for the victim's lost wages for up to 52 weeks. Anticipated work may be considered for compensation when accompanied by documentation certifying a definite start date.

(12) Lost wages are limited to $400.00 per week for a maximum of 52 weeks. The maximum award for lost wages is $15,000. For incidents of criminally injurious conduct occurring on or after October 1, 2014, 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, the maximum award for lost wages is $20,000. Life insurance shall be considered a collateral source for all claims. In the event that life insurance does not fully compensate the victim for the eligible expenses he/she incurred as a result of the victimization, the remaining eligible expenses may be eligible for compensation.

(13) <u>Collateral Source</u>

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

b. Charitable donations shall not be considered a collateral source for compensation, unless the donation is specifically designated for an expense. Examples of charitable donations designated for a specific expense include, but are not limited to the following: funeral/burial expenses; medical/dental expenses; and counseling.

(14) The maximum award for moving expenses is $1,000.00. Written estimates for moving expenses and receipts shall be required. The Commission may award the $1000 maximum for 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.

(15) Travel Expenses.
(a) Airline tickets or mileage at the State of Alabama's current rate for state employees and the current State of Alabama per diem rate and lost wages may be provided for eligible travel expenses. Travel expenses for the victim, immediate family member(s), or person(s) of the victim's choosing, may be awarded to travel out of town to attend the offender's 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 out of town to 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. Out of town travel may be allowed for medical and psychological treatment that is needed as a result of the victimization. Out of town travel required to procure needed services may be considered for the victim, claimant, and immediate family members. Out of town travel expenses may be awarded for emergency circumstances, as determined by the Commission.
(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 travel expenses shall be reimbursed at the current State of Alabama per diem rate, and airline tickets or mileage at the State of Alabama's current rate for state employees.
These requests will only be considered as a supplemental to an original claim. (There must be a timely, approved compensation claim in order for parole travel expenses to be considered. The Commission will not consider parole travel expenses filed as an original claim.) Eligible parole travel expenses will be reimbursed at the current State of Alabama per diem rate, and airline tickets or mileage at the State of Alabama's current rate for state employees. 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 travel out of town to attend the victim's funeral may be considered for reimbursement. Eligible funeral travel expenses may be reimbursed at the current State of Alabama per diem rate, and airline tickets or mileage at the State of Alabama's current rate for state employees.
(d) In order to qualify for reimbursement for out of town travel, the destination must be greater than ten miles from the home 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.

(16) Property Reimbursement and Replacement. Eligible damaged property may be replaced or restored to its condition immediately prior to victimization. Stolen property shall not be eligible for reimbursement. Compensation may be awarded for eligible property taken as evidence by law enforcement. In order for damaged property to be eligible for reimbursement it must be listed in the law enforcement incident/offense report.

1) The maximum award for property reimbursement and replacement is $2,000 per claim.
2) The claimant shall provide estimates or receipts for the damaged property for which reimbursement is requested.

3) The maximum reimbursement for damaged clothing is $500. This shall be considered as part of the $2,000 maximum award for damaged property. Damaged clothing may be reimbursed as follows:

   a) Pants, jeans or skirt - $60 maximum per item;
   b) Shorts or capri pants - $40 maximum per item;
   c) Dresses - $80 maximum per item;
   d) Shirts and tops - $50 maximum per item;
   e) Footwear - $100 maximum per pair;
   f) Jacket, coat or blazer - $100 maximum per item;
   g) Underwear - $10 maximum per item;
   h) Socks and hosiery - $8 maximum per pair;
   i) Sleepwear - $30 maximum;
   j) Bra- $25
   k) Purse - $25
   l) Wallet - $15
   m) Belt - $30

4) Additional property eligible for reimbursement:

   a) Security enhancement - alarm systems, fencing, security doors and burglar bars for real property owned by the claimant/victim; repair of rental property leased by the claimant/victim when the claimant/victim is financially responsible for repair(s) to the leased property;
   b) Prescription eyeglasses and contact lenses. The maximum award for damaged prescription eyeglasses is $350. A receipt/estimate must be provided for the eyeglasses. The maximum award for damaged prescription contact lenses is $10.
   c) Medically necessitated hairpieces used by the victim because he/she suffers from a condition such as alopecia, or he/she sustained hair loss due to an injury to the scalp or he/she received or is receiving medical treatment that resulted/results in hair loss. Documentation from a licensed health care provider substantiating the victim's hair loss is required;
   d) Furniture, appliances and bedding damaged during the victimization. Damaged furniture, appliances and bedding may be reimbursed as follows:

      1) Sofa/couch - $ 650 maximum;
      2) Loveseat/chair and a half - $350 maximum;
      3) Upholstered chair/recliner - $300 maximum;

4) Coffee table - $150 maximum;
5) End table/side table - $100 maximum;
6) Bed - $500 maximum;
7) Dresser/armoire/chest of drawers - $300 maximum;
8) Nightstand - $100 maximum;
9) Mattress set - $800 maximum;
10) Sheet Set - $40 maximum;
11) Pillow - $15 maximum;
12) Comforter/bedspread - $65 maximum;
13) Blanket - $30 maximum;
14) Dinette/dining set - $300 maximum;
15) Lamp - $40 maximum;
16) Refrigerator -$500 maximum;
17) Microwave - $100;
18) Eligible property in this category that is not specifically addressed shall be reimbursed at a reasonable rate as determined by the Commission.

5) The following property shall not be eligible for reimbursement:

a) Guard dogs;
b) Weapons of any type;
c) Automobile repair or replacement costs;
d) Cash and/or checks;
e) Computers, telephones, Blackberries, I-pods and other similar devices;
f) Jewelry;
g) All-terrain vehicles and similar devices;
h) Bicycles, scooters and similar devices;
i) Toys;
j) Hairpieces that were not obtained due to hair loss;
k) Televisions, DVD players and discs, VCRs and tapes, stereos, CD players and discs, cameras, video-recorders, game systems and other similar devices.

(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.) However, compensation may be awarded for eligible property taken as evidence by law enforcement;
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, compensation for replacement services loss may not exceed six hundred ($600.00) dollars per week. Replacement services loss is limited to a maximum of 52 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. In the event that 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 in order 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 in the instance 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 in order 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 in order for payment to be issued to the person who incurred the expense.

Author: Dr. Cassie T. Jones
Statutory Authority: *ALA. CODE* § 15-23-5(14) (1995)
History: Filed October 7, 2014