

WEST VIRGINIA CODE: §14-2A-14

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum award.

- (a) Except as provided in §14-2A-10(b) of this code, the commissioner may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.
- (b) The commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency or, in the case of sexual offense, the victim did not undergo a forensic medical examination, within 96 hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct or undergo a forensic medical examination within the 96-hour period: *Provided*, That reporting to a law-enforcement officer or agency or a forensic medical examination is not required if the victim is a juvenile in order for a commissioner to approve an award of compensation: *Provided, however*, That the filing of a civil abuse and neglect petition in a circuit court satisfies the reporting requirement, thereby allowing the minor child who is the subject of the petition to file an application for benefits, with the claims process to proceed in accordance with this code.
- (c) The commissioner may not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his or her accomplice.
- (d) A commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies or the claim investigator, may deny a claim, reduce an award of compensation, or reconsider a claim already approved.
- (e) A commissioner may not approve an award of compensation if the injury occurred while the victim was confined in any state, county, or regional jail, prison, private prison, or correctional facility.
- (f) After reaching a decision to approve an award of compensation, but prior to announcing the approval, the commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the Clerk of the West Virginia Legislative Claims Commission. The commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the

award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source: Provided, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g)(1) Except in the case of death, or as provided in subdivision (2) of this subsection, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim may not exceed \$35,000 in the aggregate. Compensation payable to all claimants because of the death of the victim may not exceed \$50,000 in the aggregate.

(2) In the event the victim's personal injuries are so severe as to leave the victim with a disability, as defined in Section 223 of the Social Security Act, as amended, as codified in 42 U. S. C. § 423, the commission may award an additional amount, not to exceed \$100,000, for special needs attributable to the injury.

(h) If an award of compensation of \$5,000 or more is made to a minor, a guardian shall be appointed pursuant to the provisions of §44-10-1 *et seq.* of this code to manage the minor's estate.