



CRIMINAL INJURIES COMPENSATION COMMISSION - GUAM

OPERATIONAL RULES AND REGULATIONS

[Prepared by the Office of the Attorney General of Guam in coordination and with approval of the Criminal Injuries Compensation Commission, adopted by the Commission on Monday, June 22, 2015.]

PART I

MISSION STATEMENT

SECTION 101. Purpose.

These Operational Rules and Regulation are adopted in accordance with 8 GCA §161.120 for the purpose of conducting the business of the Criminal Injuries Compensation Commission (hereinafter “the Commission”), the procedures to be followed in the application for compensation by persons who eligible to apply for an award under the “Compensation for Damages From Criminal Activities” Act. It is the intent of the Commission to provide for prompt and expeditious review of all applications made to the Commission pursuant to law.

SECTION 102. Definitions.

In addition to those terms defined under 8 GCA §161.10 the following terms are herein defined:

- a. “Funeral or burial expense” means expenses directly related to the cost of burial or cremation of the victim(s), to include a burial plot or crypt, casket, flowers and candles, rental of the funeral home, rental of a church, tents, chairs, funeral booklets, choir, transportation of the deceased from off-island, as well as food and drink in an amount not to exceed Fifteen Hundred Dollars (\$1,500.00).
- b. “Incurred expense” or “Expense incurred” means expenses for the benefit of the victim to include medical expenses, loss of earnings power due to total or partial incapacity, medical expenses, pain and suffering, and pecuniary loss for any person responsible for the maintenance of the victim.
- c. “Maintenance of the victim” means the actual providing of direct physical care to a victim such as hospice, food, clothing, personal hygiene needs, but does not include indirect costs such as power, utilities, mortgage or rent, or personal

financial debts. It also may include the payment of expenses directly related to either temporary or long care maintenance of the victim at a facility licensed on Guam to provide such services.

- d. "Medical expense" means monetary cost involved in seeking treatment from a licensed medical provider from injury resulting to a victim from a violent crime as stated in 8 GCA §161.55.
- e. "Pain and suffering" means expenses incurred by the victim related to severe or serious physical injury, or temporary mental or behavioral health suffering requiring counseling in order to cope with the trauma of the victimization.
- f. "Pecuniary loss" means damages measured in financial terms, in monetary amounts to include: loss of employment, loss of financial support, out of pocket cost or expense associated with maintenance of the victim.
- g. "Injury" means actual bodily harm, and in respect to the victim includes pregnancy, and mental or nervous shock.

PART II

COMMISSION GENERAL PROCEDURES

SECTION 201. Membership.

The Commission shall be made up of five (5) Commissioners appointed by the Governor with the advice and consent of the Legislature.

SECTION 202. Chairperson/Term Limit. The Commission shall elect a Chairperson from among the membership who shall serve for a period of two (2) years. A commissioner may be reelected to the position of Chairmanship to a second consecutive term. No Commissioner can serve more than one (1) consecutive term as Chairman, for a total of four (4) years, without a break in tenure, unless no other Commission member is otherwise interested in serving as Chair, in which case an outgoing Chairman may continue to serve for successive terms without limit. The Chair may be removed without cause by a majority of the members.

SECTION 203. Hearing/Meeting.

- a. Hearings.

A hearing shall be called by the Chairperson at such times, dates and places as shall be set by the Chairperson. Additional hearings can be called by a majority of the Commission members in writing submitted to the Chairperson. The Attorney General's Office (the "OAG") shall provide all administrative support and assistance to the Commission for the purposes of calling hearings. The business of

a hearing shall be for the purposes of consideration of an application, taking testimony and evidence from applicants and supporting witnesses on a application, adopting rules and regulations relative to the statutory duties of the Commission, recommendation for new or amended regulation or legislation, issuing of subpoena(s), review the financial stability of the Criminal Injuries Compensation Fund (the “Fund”), consideration and approval of fiscal year budget, to recommend fiscal year replenishment of Fund assets to the Governor and the Guam Legislature, and to consider such matters as will benefit the general community in relation to victim compensation.

b. Executive Meetings.

The Chairperson can call an executive meeting of the membership for the purpose of discussing administrative or executive matters. No application can be decided upon, and no action taken with reference to an application at an executive meeting. The purpose of a meeting is to discuss administrative matters related, but not limited to personnel issues, budget preparation, legal assistance from the Attorney General, and matters related to establishing an agenda and procedural conduct of a hearing. Executive meetings may be conducted via teleconferencing.

SECTION 204. Quorum.

- a. A validly convened hearing requires a quorum present. A quorum of the Commission for purposes of a hearing shall consist of three (3) voting members. No decision or action of the Commission shall be valid without a quorum. No hearing can be convened without a valid quorum.
- b. Commission meetings may be conducted with less than a quorum to discuss administrative matters.
- c. A quorum failure resulting from a vacancy in the number of Commissioners necessary to establish a valid quorum shall be resolved in accordance with 8 GCA §161.15(a). Upon resolution of the quorum failure, §161.15(a) shall no longer be applicable.
- d. A Commissioner may be considered in attendance for purposes of establishing a hearing quorum via any video conferencing that permits questions and answers to be properly recorded.

SECTION 205. Vacancy.

A vacancy in the membership of the Commission shall be filled only in accordance with statute. 8 GCA §161.20.

SECTION 206. Voting.

A decision of the Commission shall require a vote of three (3) members participating in a hearing where a valid quorum is called. No action or decision shall be valid without a quorum vote. A Commissioner who is participating in a hearing via two-way video conferencing shall be permitted to exercise his/her vote. 8 GCA §161.25.

SECTION 207. Public Notice.

All hearings of the Commission shall comply with notice requirements of the Open Government law. No decision is valid at any hearing that has not been published as required under the Open Government Law. Executive meetings do not require compliance with the Open Government Law.

PART III

ELIGIBILITY

SECTION 301. Victim Eligibility.

A person is eligible to apply for payment compensation if they are:

- (a) A resident of Guam as defined in 3 GCA §9123;
- (b) The act or omission resulted in the death or injury to the victim;
- (c) The act or omission occurred on Guam, or if it occurred outside of the jurisdiction of Guam, the person can prove that the State in which the crime occurred does not have a crime victim's compensation statute;
- (d) The act or omission resulted from a violent crime enumerated in 8 GCA § 161.55.
- (e) The compensation is for the benefit of the victim or persons as provided for in 8 GCA §161.50(a)(1) through (4).

SECTION 302. Burden to Demonstrate Eligibility.

The burden of showing eligibility rests wholly with the person who seeks payment compensation as a victim or person entitled to compensation under 8 GCA §161.50(a)(1) through (4).

SECTION 303. Filing Limitation.

An application must be made within eighteen (18) months after the date of injury, death or property damage. 8 GCA §161.90(a).

PART VI

APPLICATION

SECTION 401. Application Form.

Application for payment compensation under these Rules and Regulations shall be made on FORM "A" attached hereto. No other application form shall be acceptable. An applicant is required to make a sworn declaration attesting to the truthfulness of all information contained in the application.

SECTION 402. Review for Eligibility and Completeness – Referral to Commission.

- (a) The Office of the Attorney General (hereinafter "OAG") is responsible for administratively reviewing all applications filed promptly after submittal to determine whether the applicant is eligible, and if eligible whether the application is properly filled out. Any incomplete application shall not be processed for further consideration. An applicant shall be notified within twenty (20) business days of filing whether the applicant meets eligibility and whether the application is complete or incomplete. An incomplete application may be properly refilled within the time limitation in Section 203 herein, provided the applicant is eligible.
- (b) The applicant is responsible for submitting all supporting documentation including original or certified copies of medical billings, receipts or certified copies thereof as exhibits to the application.
- (c) The applicant should provide the Commission with all supporting documentation to prove loss of income or other loss of employment.
- (d) The applicant must provide all evidence to prove any pecuniary losses, pain and suffering, or losses related to maintenance or care of a victim.
- (e) A dependent, parent, or relative applicant must submit documentation to prove the relationship between the victim and them self.
- (f) An applicant claiming funeral or burial expenses must provide actual billings, or payments of billings related to funeral costs and expenses.
- (g) Every applicant must provide evidence of collateral compensation deductions from any source, whether from the offender or from any person on behalf of the

offender at the time of application, either public or private, directly or indirectly attributable to the injury or death which gave rise to the requested payment compensation being sought (i.e. insurance coverages), except for life insurance benefits of the victim which are exempt from deduction. (8 GCA §161.100)

- (h) The OAG shall refer all completed applications to the Commission for further consideration and hearing. The Commission is permitted to meet in executive meeting with the administrative staff of the OAG for purposes of pre-hearing preparation.

PART V

HEARING

SECTION 501. Hearing.

- (a) The Chairperson of the Commission shall sit as hearing officer for the Commission. The Commission is authorized to appoint an Administrative Hearing Officer (AHO) to assist in conducting all procedures required of a fair and full hearing.
- (b) The Commission is authorized to hire an Administrative Law Judge (ALJ) to conduct the evidentiary findings at hearing in regard to an application for an award, to receive evidence in support of an application, and to recommend either approval or denial of an award based on the evidence presented.
- (c) The hearing shall be informal. Rules of evidence and civil procedure shall not apply.
- (d) The applicant and all witnesses shall testify under oath.
- (e) The applicant is entitled to call witnesses to testify at hearing, and to request the Commission issue subpoenas for the attendance of any witness to a hearing. The applicant shall pay the civil fee for a witnesses attendance equivalent to the same fees impose by the Superior Court of Guam for attendance of a witness on subpoena.
- (f) An applicant is entitled to be represented by counsel at his/her own expense.
- (g) The Commission members may ask any relevant questions of the applicant or any witness presented to the Commission. The applicant, or counsel, may cross-examine any witness.
- (h) The burden of proof is upon the applicant to prove his/her application by clear and convincing evidence.

- (i) Hearings can be recessed or continued in the discretion of the Commission.
- (j) All hearings shall be recorded for appeal purposes. No written transcript shall be required or be produced. A digital transcript of the hearing shall be provided for purposes of an appeal, or upon written request of a party, and payment of a \$25.00 reproduction fee.
- (k) All hearings shall be open, unless in the discretion of the Commission, or on motion of the applicant, it determines that the best interest of the parties, including the interest of the offender who may still be engaged in the defense of his/her criminal case, requires that the hearing be closed.

SECTION 502. Medical Examination.

- (a) The Commission may order the applicant to be examined by a licensed physician appointed by the Commission Chairman, specifically requesting a determination that would be relevant to the Commission's determination of whether the injury was reasonably and likely a result of the acts or omissions of the offender as alleged by the applicant. Such examination shall be paid from the administrative funds of the Commission. A report shall be made to the Commission by the appointed physician expressing his/her expert finding(s) as to whether the injury was more likely than not the result of the alleged injury caused by an act or omission of the person alleged to have committed the crime. A copy of the report shall be made available to the applicant and his/her attorney. 8 GCA §161.35.
- (b) The applicant may dispute the findings of the report at hearing, and may submit a medical report of a private physician of the applicant's choice at the applicant's own expense.

PART VI

DECISION AND APPEAL

SECTION 601. Decision.

- (a) The Commission shall render a decision no later than one hundred and twenty (120) days from date of the final hearing, unless good cause is shown in which case the Commission shall notify the applicant of the reason(s) for an extension of time which shall not exceed an additional sixty calendar (60) days.
- (b) Where the hearing and findings of fact are conducted by an ALJ, the Commission may accept or reject the recommended findings of the ALJ. If the Commission rejects the recommended findings of the ALJ, the Commission shall review all the record evidence presented without further hearing, and issue its final decision no later than sixty (60) days after receipt of the ALJ's recommendation. In its

decision, the Commission shall state the reasons for rejection of the ALJ's recommended findings, and the basis for Commissions decision.

SECTION 602. Reconsideration.

The Commission is permitted to reconsider any decision rendered, either sua sponte, or on petition of an aggrieved applicant. A reconsideration motions must be filed no later than ten (10) working days after issuance of the Commission's decision. Reconsideration is permitted only on the basis of an error or mistake of fact. Reconsideration is not permitted to challenge the Commission's final conclusions or discretionary authority. No new evidence shall be permitted as the basis for a motion for reconsideration. 8 GCA §161.45(a).

SECTION 603. Appeal.

An aggrieved applicant may appeal the decision of the Commission to the Superior Court of Guam on the sole grounds that the decision was in excess of the Commission's authority or jurisdiction, within thirty (30) calendar days after service upon the applicant of an original or certified copy of such decision. Except as provided herein, there is no further basis for appeal. 8 GCA §161.45(b).

SECTION 604. Finality.

Except as provided in Section 602, all decisions of the Commission whether to approve or disapprove an award are final decisions of the Commission.

PART VII

AWARD and ATTORNEY FEES

SECTION 701. Maximum Awards. The following awards are authorized:

- (a) For an aggregate amount for all expenses resulting from personal injury actually and reasonably incurred by a victim, or incurred expenses for the maintenance of a victim, not to exceed Twenty-Thousand Dollars (\$20,000.00). 8 GCA §161.60(a), and §161.90(b).
- (b) For an aggregate amount for all hospital, medical, funeral or burial expenses incurred by a parent of a deceased victim, or one or more dependents of a deceased victim, not to exceed Twenty-Thousand Dollars (\$20,000.00). 8 GCA §161.50(a)(1) through (4), and §161.90(b).
- (c) For expenses including pecuniary loss to dependents of a deceased victim, loss of earning power as a result of total or partial incapacity of the victim, pain and suffering of a victim not to include a relative, not to exceed Ten-Thousand Dollars (\$10,000.00). 8 GCA §161.60(b) through (e), and §161.90(b).

- (d) For an aggregate amount for medical expenses or property damage incurred by a private citizen, who apprehended a person who had committed a crime within Guam, or materially assisted a peace officer to prevent or attempted to prevented a person from committing a crime within Guam, or any person who has suffered pecuniary losses in the care or maintenance of a private citizen engaged in the acts herein stated, not more than Ten-Thousand Dollars (\$10,000.00). 8 GCA §161.75

SECTION 702. Attorneys Fees.

The Commission may award reasonable attorneys fees as provided for in 8 GCA §161.40. The Commission shall require the attorney to submit an Affidavit of Attorney Fees to the OAG within thirty (30) days of the issuance of a final decision of the Commission. An award of fees is not subject to reconsideration or appeal.