

Crime Victim Compensation QUARTERLY

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National Conference To Mark 25 Years of VOCA Grants to States

Participants at this year's National Training Conference will celebrate the 25th year of the Victim of Crime Act of 1984, which authorizes crucial funding for state compensation and assistance efforts. Initially providing just \$23 million in compensation grants to 36 states (the other states didn't have compensation programs yet) and \$41 million to support victim assistance programs, VOCA's Crime Victims Fund has grown to provide close to \$700 million annually to help victims.

The passage of VOCA wasn't the beginning of victim compensation in America — California had established the first compensation program nearly 20 years earlier, and 70% of the states already had compensation programs in 1984. But VOCA provided a new, stable funding stream to states, enabling them to expand benefits and bring more victims to their programs. It also served as a catalyst for the remaining states without programs, and within eight years victims across the entire country were able to seek financial help.

VOCA also standardized some important aspects of victim compensation. It required each state to cover all U.S. citizens victimized within the state's borders, regardless of the state of residency; previously, some states only covered their own

residents. VOCA required states to provide mental health counseling, and to cover victims of domestic violence and drunk driving — coverage that was lacking in some states. While in its early years VOCA provided only 25% of each program's annual funding (it's now up to about a third), states began to increase caps and maximums, to extend benefits to family members, and to eliminate or decrease minimum loss or financial hardship requirements.

On the victim assistance side, the growth in services has been even more dramatic. VOCA assistance grants have grown nearly 10-fold, and now support 4,300 public and nonprofit victim service programs. Prioritization of domestic violence, sexual assault, and

child abuse programs helped ensure that specific types of victimizations were addressed. The quickly growing ranks of victim advocates also had a direct effect on bringing many more victims to compensation programs, since VOCA mandated assistance with compensation applications.

Throughout its history, VOCA has been ably managed by the Office for Victims of Crime in the U.S. Department of Justice. We look forward to meeting with OVC and our colleagues in victim services to celebrate VOCA!

25 Years of Serving
Crime Victims:
Celebrating VOCA
National Conference
Washington, DC
Sept. 30-Oct. 2

President's Message

It's been a busy Spring! We've had two Regional conferences for our members; we've had an extra federal grant to apply for and administer; and of course we've had our own programs to operate and legislative sessions to deal with, in the midst of a severe economic crisis. I hope you've made it through a busy season, and that your programs are in good shape as you enter a new fiscal year.

We've been hard at work planning our next National Training Conference, to be held in Washington, DC, September 30—October 2. We'll be joining with state administrators of victim assistance funds to mark the 25th anniversary of the passage of the Victims of Crime Act of 1984. It will be an excellent opportunity to get the latest information on grant administration directly from federal officials, as well as to compare notes on a wide variety of topics with your colleagues in compensation. I truly hope you're making plans to be with us.

I want to thank our hosts for our Regionals this Spring: the South Carolina Office of Victim Assistance, and the New Mexico Crime Victim Reparations Commission. I attended the Southern-Eastern Regional in Hilton Head in March, and I enjoyed getting together with managers, claims specialists, Board members and other key staff. Having a chance to discuss issues in small-group discussions, where individual questions can be explored in depth, is always a valuable experience. We were encouraged

by the attendance at both Regionals, despite some states facing travel restrictions or curtailments. Thanks to all who managed to get to the conferences, because your active participation is what makes them so worthwhile.



In looking forward to the fall conference, we've recognized that many of you are looking for training on management issues. We're lining up a number of speakers to examine effective supervisory techniques. Another topic that merits attention is how we can improve our "advocacy" efforts for victims within compensation programs. How can we make the process easier for victims, and how can we refer them to other services that may be of help? With our victim assistance colleagues, we can look at ways to make service programs more effective in helping victims file compensation applications. We'll offer workshops on eligibility and denial factors, including contributory conduct; on recovering restitution; handling dental claims; and dealing with stress and burnout, among many other topics. I think you'll

enjoy our conference location, near the National Zoo in D.C. Let us know if you need more information on the conference.

I'm looking forward to seeing all of you in September, and let us know in the meantime if we can be of any help.

— Deb Rice

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It's Raining Grants! FY '09 and Stimulus Funds Go to States

Crime victim compensation programs are getting a double dose of VOCA funding this year, with Recovery Act (stimulus) grants approved for all states, and regular FY 2009 grants finally being processed. State compensation programs are getting about 15% more in federal funds this year as a result of the two grants.

With grants come reporting and accounting obligations, and states are feeling their way into a new regimen of Recovery Act reporting. Many states experienced obstacles in getting appropriately registered in the federal government's central data base for grantees — something state VOCA-administering agencies hadn't had to do before. Exactly what will need to be reported on Recovery Act spending, and how it will be done, remain unsettled. But what is clear is this: states are free to spend Recovery Act money just as they would their normal VOCA grants, and there's no requirement at all to spend it on any special category of benefit.

Recovery Act grants totaled \$47.5 million for compensation programs. Slightly more than \$181 million is about to be released to state compensation programs for regular VOCA grants. FY '09 victim assistance funding is at \$364 million this year, and with the addition of \$47.5 million in stimulus funding, the total is a new record for annual victim service funding.

Congress is expected soon to approve a record VOCA cap of \$705 million for FY 2010.



Regionals Draw Large Numbers

This year's **Southern-Eastern Regional** in Hilton Head and the **Western Regional** in Santa Fe brought managers, claims processors, Board members, and other key staff together from 20 states to explore a wide variety of important issues. Sharing ideas and strategies in small-group discussions, participants made the most of their time in finding ways to improve their programs.

Guest speakers facilitating discussions of cultural diversity were highlights of both Regionals. Both meetings also took a hard look at the judiciary's interpretation of their contributory conduct laws. At the Southern Regional, conferees were treated to a description of host South Carolina's extensive outreach and advocacy efforts, which include personnel in the field to coordinate and train service programs, as well as advocates in-house to assist victims with their applications and appeals. Lessons learned in handling emergency situations like the Virginia Tech shootings, and a new federal program to assist victims of international terrorism also were the focus of workshops. The Western Regional agenda also dealt with new and proven outreach strategies, and international terrorism. Medical claims were dissected by Dr. Cameron Crandall, New Mexico's Commission Chair.

As always, participants found informal networking opportunities to be of equal value as more structured sessions. Spring brought great weather to both the Atlantic shore and the high desert of the Southwest, and getting together with colleagues was a great way to learn new things and say goodbye to winter.

Plans are underway for Regionals next Spring, and details are expected to be announced at our National Training Conference this fall. Stay tuned!

National Training Conference
25 Years of Serving Crime Victims: Celebrating the Victims of Crime Act
September 30 - October 2, 2009

Results From Recent Surveys

Self-Employed Claimants

How do victim compensation programs handle claims from self-employed victims? Do they pay based on gross income, adjusted gross income, or some other way?

We found an interesting split among states on this question. Most go with adjusted gross income: what the victim's net profit would be, as shown on Schedule C of his tax return, rather than his gross income. After all, this is what the victim actually "made," as reported to the IRS; wouldn't paying more than that mean the victim is doing better injured than if he was working?

At least a few states, however, are trying to figure out which of the claimant's expenses are ongoing or "fixed" (like truck insurance), and which are incurred only when the person is working. Fixed expenses could be compensated, but expenses incurred only while working would not. This approach might help more victims maintain their businesses during a period of disability, since their inability to pay fixed costs might mean they'd have to give up their business and be unable to return to it.

For example, in Texas, self-employed wage loss payments are calculated by using Schedule C, part I, line 7: gross income minus the cost of goods sold. Director Gene McCleskey says, "We use the gross income rather than the net profit on line 31 because the victim is losing his gross income, and the costs of operating the self-employed business will continue regardless of whether the income is coming in or not. For example, mortgage or rent on an office, insurance, truck payments, etc. Our position is that these costs will continue, and for the self-employed person, these costs are to the individual: the truck payment is still due, vehicle and health insurance are still due). In addition, in some cases, such as farming, line 31 for net profit is a loss in any given year."

Deb Rice in Maine says, "I use the Schedule C. I try to determine whether an expense is a fixed cost or a cost which is dependent on the person working. For instance, gasoline would be a cost related to working; if the claimant were not working, there would be no gasoline cost. On the other hand, there would be an ongoing cost of insurance

on the truck." Her program's approach is to pay the net income plus some of the fixed costs.

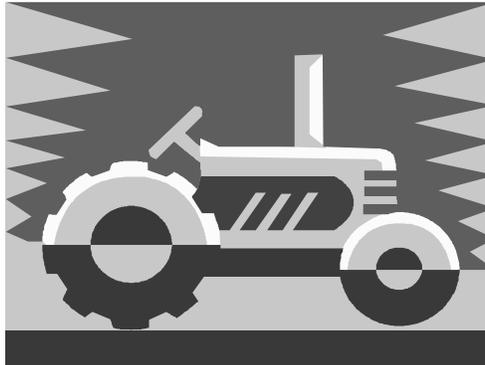
One manager who uses adjusted gross income (net profit) acknowledged that "this is a very unpopular rule which often results in complaints from self-employed victims. Self-employed claimants have told us that their expenses, such as rent, continue even during down times."

What if the self-employed victim can't produce a tax return, because he hasn't filed one? Is failure to file a return an automatic denial?

In many states it would be, though some said the decision is based not on a statutory requirement to file, but rather the practical problem of trying to figure out what the victim's income is. Still, some states said they can make an effort to establish actual income loss using other documentation.

One state said it could look at 1099 forms, or certified wage histories from employers who have contracted with the individual for work. Another state said it might consider copies of checks the individual

used to pay himself, accompanied by an affidavit stating that was what they were for. Other states said they could try to use business accounting records or logs, or quarterly sales tax receipts, or affidavits, vouchers or contracts from business associates. But managers warned that all of these alternative documentation sources pose difficulties, and are not the preferred way to calculate self-employed lost income.



Minors as Claimants

Can a minor file a claim for victim compensation?

Answer: No. Minors cannot legally contract for services. The victim compensation application itself is essentially a contract as well, and minors cannot obligate themselves under the application's terms for repayment of recovered funds, for example. While minors are allowed to obtain emergency medical treatment without parental permission, parents are obligated to pay, not the minor. One respondent noted that minors "of reproductive age" can obtain treatment in cases of sexual assault without parental permission, but this still would not make them eligible to file a compensation claim.

Calculation of Overtime

How do you handle requests for payment of lost overtime income? Do you award it at all? If so, how do you calculate it, particularly if it is sporadic and uncertain?

Most states do make an effort to include in their lost-wage awards the amounts that can be documented as overtime income. The usual documentation is usually required: employer verification statements, earnings records, or tax forms.

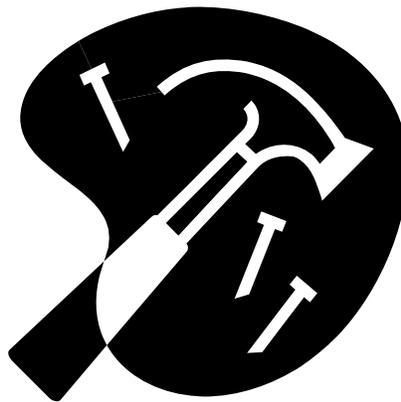
The problem is determining overtime income when it is not a regular part of the paycheck. One state said it did require some consistency, if it was necessary to determine the actual loss. But it would try to work with whatever pay stubs or records were available to determine some average loss. This seems to be the general-consensus approach. One manager emphasized that payment of overtime is not a given, and that if it is a sporadic thing, the evidence just may not be there.

One state said it only paid overtime if it was required by the employer, not if the employee “volunteered” to work overtime.

Drugs in the Victim's System

How does a victim having drugs in her system affect her eligibility for victim compensation? For example, if a perpetrator assaulted a victim without knowing that she was using drugs, but subsequent evidence showed use of an illegal substance, would an automatic denial result? For the large majority of states (80% or more), the drug use alone would not affect eligibility or result in a denial, if a victim was found to have drugs in her system and if that drug use did not play a role in causing the criminal victimization. Some states, however, would have to deny the claim because of provisions in their compensation laws requiring denial for any criminal activity, regardless whether it caused the crime that resulted in the victimization. This is not “blaming the victim,” but rather fulfilling the letter of the law.

All state compensation laws say that contributory misconduct results in a denial or reduction; but most require that the misconduct (in this case, drug use) must contribute to the victimization or the injury. Misconduct alone is not enough for a denial, unless it causes the victimization.



A typical example of such a provision is this: *"In determining the amount of an award, the program shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the board or board member shall reduce the amount of the award or reject the claim altogether, in accordance with such determination."*

However, some states' compensation laws are written differently. Mississippi's law, for example, is very clear on this:

"Compensation shall not be awarded under this chapter: To any claimant or victim who, at the time of the criminally injurious conduct upon which the claim for compensation is based, engaged in conduct unrelated to the crime upon which the claim for compensation is based that either was

(i) a felony, or

(ii) a delinquent act which, if committed by an adult, would constitute a felony."

In addition, the law says:

"Compensation otherwise payable to a claimant or victim may be denied or reduced to a claimant or victim who, at the time of the crime upon which the claim for compensation is based, was engaging in or attempting to engage in other unlawful activity unrelated to the crime upon which the claim for compensation is based."

Here is another example of a compensation law that might require denial, whether or not the drug use caused the crime:

"Compensation shall not be made when the bodily injury or death for which a benefit is sought was caused by any of the following:

- a. Consent, provocation, or incitement by the victim.*
- b. The victim assisting, attempting, or committing a criminal act."*

Another example:

"The Board shall deny payment of a claim for the following reasons:

(1) Where the claimant was the perpetrator of the crime on which the claim is based, or was a principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred."

But most states simply do not have these provisions. They must look to whether “causation” is involved, rather than simply whether the victim's behavior illegal or wrong. The question most programs must ask and answer affirmatively is this: Did the victim's bad behavior cause the crime? If it didn't, then there can be no denial.

For a further discussion of this issue, see page 7.

States Get Creative on Outreach

Here are some new — and some tried and true — ways state programs are trying to reach more victims and provide training to those who assist them in filing applications.

Nevada

Nevada's Victims of Crime Program has translated its entire website into Spanish. See www.voc.nv.gov

California

The Victim Compensation and Government Claims Board has posted its law enforcement training presentation on its website. See www.vcgcb.ca.gov/docs/resources/vcp_first_respond_2009_1.pdf

The program also has posted its Restitution Training course online: www.vcgcb.ca.gov/CArest.aspx

South Carolina

The State Office of Victim Assistance placed compensation posters in Wal-Mart dressing rooms.

Virginia

The Criminal Injuries Compensation Fund has set up an on-line training presentation, as well as a way advocates and others can request on-site training. Go to www.cicf.state.va.us/training.shtml

Virginia also is doing regional trainings around the state, inviting police officers, probation personnel, and advocates.

Georgia and Massachusetts

Outreach coordinators in each state provide training and focus on improving awareness.

New Mexico

The Crime Victims Reparation Commission continues to hold regular trainings at its offices (www.cvrc.state.nm.us/training.html) and recently held its 14th annual Advocacy in Action conference, drawing hundreds from around the state.

These are just a sample! Let us know what you're doing that's new and interesting to reach more victims and the people that assist them.

A Primer on Contributory Conduct

Courts deciding cases involving contributory conduct, on appeal, have consistently defined it as having two parts:

1. **The victim must have committed a criminal act or a substantially wrongful act; *and* That act must have played a substantial role in causing what happened to the victim.**

This is a *two-part test*, which means that both parts must exist in order for a claim to be denied on the basis of contributory conduct. In other words,

- The fact that the victim committed some substantially wrongful act is not enough to deny or reduce a claim. The wrongful act, or misconduct, *must cause* the victimization in some substantial way. And: It isn't enough that the victim's conduct caused the victimization; the victim's conduct must be criminal or *substantially* wrong.

Unless you find both misconduct *and* causation, you can't deny or reduce a claim.

“ In all of the cases [courts have decided in other states}, ‘contributory misconduct’ or ‘contributed to the infliction of his injury’ was only found in cases where the claimant’s misconduct caused, contributed, or was the proximate cause of the injury.” *Kansas Supreme Court decision in Fisher v. Kansas Crime Victims Compensation Board (2006)*

“A victim does not have to be innocent of all misconduct, but only that misconduct which can reasonably be said to have caused or contributed to the injury. Contributory misconduct connotes a finding that the misconduct is ‘a’ or ‘the’ proximate cause, but for which the injury would not have occurred.” *In re McNeil, 6 Ohio Misc. 2d 12, 453 N.E.2d 1309 (1983), Ohio Court of Claims*

LESSON LEARNED: Think like a judge! They always apply the facts to the law to make a decision. So:

Take your fact situation and analyze it in light of the two-part test described above:

1. Did the victim commit a criminal act, or do something really bad?

If the answer is NO – for example, if you think the victim's act wasn't substantially wrongful, then stop! End of story. No denial. You haven't met the first test.

If the answer is YES, go to part 2.

2. Did the victim's act cause what happened to the victim, in some substantial way? (Judges have said you also can ask this question in these ways: Was there a closeness in time and place between the victim's act and what then happened to him? Was it foreseeable or likely that the victim's act would cause what happened?)

If the answers to these questions are yes, then you have grounds for denial or reduction. If the answers are no, then you cannot deny or reduce the claim.

You must answer YES to both part 1 and part 2 to find contributory conduct.

EXCEPTIONS? Only if your compensation law states specifically that criminal activity alone is sufficient to deny a claim, even if the crime didn't cause the victimization. Few states have such language!

2009 National Training Conference

Washington, DC
September 30 – October 2

The nation's crime victim compensation programs will join with their colleagues in VOCA assistance for three days of discussions on the most important topics facing professionals serving victims today. Sponsored by the U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, the conference will celebrate the 25 years that have passed since the Victims of Crime Act of 1984 (VOCA) was adopted by Congress, providing crucial funding for services administered by the states. A full agenda of workshops for compensation program managers, claims processors, Board members, and other key staff will be offered. More details are available at www.navaa.org/conf

VOCA
25 Years
1984—2009