

**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of:

Christine N.

Precedent Decision 11-02

Introduction

An in-person hearing on this application was held on September 9, 2009, in San Diego, California, by Kyle Hedum, Hearing Officer, California Victim Compensation and Government Claims Board. Christine N. appeared and testified under oath. Also present at the hearing was Christine N.'s husband, Regis M.

Procedural Background

This application for compensation from the California Victim Compensation Program is based on injuries sustained by Christine N. on October 2, 1998, when her car was struck by another vehicle driven by an intoxicated person. Regis M. suffered serious head trauma, and Christine N. had a fractured pelvis, possible fractures to her vertebrae, and facial lacerations. Christine N.'s application was submitted on September 27, 1999, and it was approved on December 17, 1999.¹ Christine N. requested income loss compensation for the period of October 3, 1998, through March 14, 1999. The Program staff determined that Christine N.'s income loss had been fully reimbursed from monies that Christine N. received from restitution and automobile insurance.

On October 2, 2007, Christine N. requested additional income loss compensation for the period beginning April 1, 2001. Christine N.'s request was recommended for denial because the Program staff determined that there was not a preponderance of evidence that she was eligible for

¹ Regis M. was approved for Program compensation and has received \$46,000.00 in medical care reimbursement, thus exhausting his available benefits.

1 additional income loss reimbursement, according to the laws that were in effect at the time of the
2 qualifying crime. Christine N. filed a timely appeal.

3 **Statement of Issues**

4 Is there a preponderance of evidence that Christine N. is eligible for additional income loss as
5 a direct result of the qualifying crime?

6 **Hearing Testimony**

7 Christine N. testified to the following information at the hearing. Much of her hearing testimony
8 was subsequently provided to the hearing officer in an electronic format and is so incorporated into this
9 proposed decision.

10 **Income Loss:** Prior to the accident, Christine N. worked full time. Christine N. was
11 hospitalized for six weeks following the accident, and when she stopped taking pain medication in
12 December 1998, she immediately became aware that her back pain was nearly debilitating. Christine
13 N.'s doctor told her that because she had so many other injuries, her back pain had been masked by
14 the pain medication she was taking. Her doctor prescribed outpatient physical therapy and suggested
15 that she not return to work until after the physical therapy sessions were completed. Christine N.
16 returned to work on March 16, 1999, and she stopped working on April 1, 2001. A physician retained
17 by the Employee Development Department diagnosed Christine N. as suffering from severe back pain
18 as a result of the 1998 automobile accident. In September of 2001, Christine N. was approved for
19 Social Security Disability benefits.

20 Christine N. disagreed with the Program's determination that her income loss was restricted to
21 a time period not to exceed two years² from the date of the qualifying crime and was limited to
22 \$46,000³. Christine N. argued that her supplemental claim for income loss, filed on or about October
23 2, 2007, should be evaluated pursuant to the Program's 2007 statutes. In support of this argument,
24 Christine N. cited current Government Code section 13959(d), that states: *Except as otherwise*

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26 ² The 1998 statute allowed an additional year of eligibility if the victim was either enrolled in a program
27 of retraining or rehabilitation or was unable to do so as a result of a disability resulting from the
28 qualifying crime.

29 ³ Gov. Code §§ 13957.5(a)(2), 13957.5(f).

1 provided by law, in making determinations of eligibility for compensation and in deciding upon the
2 amount of compensation, the board shall apply the law in effect as of the date an application was
3 submitted.

4 Christine N. asserts that because she is a disabled victim pursuant to Section 416(i) of Title 42
5 of the United States Code,⁴ she is eligible for additional income loss compensation, with no time
6 limitation, up to the \$70,000.00 limit contained in the Board's current statutes. Christine N. also argued
7 that it is unfair to use the date of her initial application for Program eligibility to deny her supplemental
8 application for income loss compensation.

9 **90 Day Period:** Christine N. also claims that she is entitled to additional income loss
10 compensation because she meets the requirements of California Code of Regulations, Title 2, section
11 649.10 in that she had no losses prior to her request for additional income loss compensation on
12 October 2, 2007. Accompanying the request for compensation, Christine N.'s doctor submitted an
13 updated medical report on September 2, 2008.

14 Findings

15 A preponderance of the evidence supports each of the following findings:

- 16 1. Christine N. was injured in a qualifying crime on October 2, 1998.
- 17 2. Christine N. filed her application with the Program on September 27, 1999, and it was
18 approved on December 17, 1999.
- 19 3. Christine N.'s request for lost income for the period of October 3, 1998, through March 14,
20 1999, was denied because Christine N. was fully reimbursed from monies received from
21 restitution and automobile insurance.
- 22 4. On or about September 2001, Christine N. was deemed to be totally disabled, by the Social
23 Security Administration, as a result of the qualifying crime.
- 24 5. On October 2, 2007, Christine N. filed a supplemental claim for income loss.

25 Determination of Issues

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27 ⁴ In 2001, the statute regarding income loss was amended to allow income loss to be paid for up to five
28 years after the qualifying crime. Income loss could also be paid for more than five years after the
29 qualifying crime if the victim was determined to be disabled as defined in Section 416(i) of Title 42 of
the United States Code and the disability was the direct result of the qualifying crime.

1 The Board may authorize a cash payment to the victim equal to the pecuniary loss resulting
2 from loss of income directly resulting from the victim's injury.⁵ If loss of income is claimed to have
3 occurred as a direct result of the qualifying crime, the claimant shall produce evidence of income loss
4 as well as a statement of disability from the treating medical or mental health provider.⁶ Christine N.
5 has the burden of proof on all issues necessary to establish her eligibility for Program compensation.⁷

6 In this case, it is necessary to look at several scenarios in determining whether Christine N. is
7 entitled to additional income loss compensation, and if so, the amount of that compensation.

8 I. In 1998, Government Code section 13965 stated that an eligible victim could receive
9 income loss not to exceed two years after the qualifying crime in an amount not to exceed \$46,000.00.
10 Therefore, if the law in effect at the time of the qualifying crime is used, Christine N. is not eligible for
11 additional income loss because her request is barred by the two-year time limitation.

12 II. In 1999, Government Code section 13965 was amended so that an eligible victim could
13 receive income loss not to exceed three years after the qualifying crime in an amount not to exceed
14 \$46,000.00. Therefore, if the law in effect at the time of the application is used, Christine N. is again
15 not eligible for additional income loss.

16 III. On January 1, 2001, Government Code section 13965 was amended and renumbered to
17 13965.1. Government Code section 13965.1 specified the types and amounts of assistance available
18 to an eligible victim. An eligible victim could now receive income loss for up to five years after the
19 qualifying crime. If an applicant was determined to be disabled pursuant to the Social Security
20 Administration, the five year limitation was waived. The maximum amount of compensation available
21 to the applicant was also raised to \$70,000.00. In effectuating these changes, Government Code
22 section 13965.1(c) stated that any change in the law resulting from the addition or amendment of
23 section 13965 shall be applied prospectively to claims based on the date of the crime on which the
24 claim for loss of wages is based. Therefore, under the limitations imposed in Government Code

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26 ⁵ Gov. Code, § 13957.5(a)(1).

27 ⁶ Cal. Code Regs., tit. 2, § 649.7(b)(2).

28 ⁷ Gov. Code, §13959(c), Cal. Code Regs., tit. 2, § 647.32(a).
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1 section 13965.1, Christine N. is not eligible for additional income loss because her request for
2 additional income loss must be determined according to the law in effect as of the date of the crime.

3 IV. On January 1, 2003, the Board's statutes underwent further change in both numbering and
4 substance. Specifically, section 13959(d) clarified that when determining the eligibility of a victim and
5 the amount of compensation, the Board shall apply the law in effect as of the date an application was
6 submitted.

7 This is the section of the law that Christine N. wants the Program to use in determining her
8 eligibility for additional income loss compensation. However, the filing of the initial application must be
9 within one year of the qualifying crime. Thus eligibility determinations for any subsequent,
10 supplemental applications must be decided based on the law that was used to determine initial
11 eligibility. Since Christina N.'s application was submitted and approved in 1999, her eligibility for
12 additional income loss compensation must be decided on the laws in existence 1999. Therefore,
13 Christine N. is not eligible for additional income loss.

14 V. Finally, Christine N.'s reference to California Code of Regulations, title 2, section 649.10 is
15 mistaken. Christine N. should have referenced section 649.15(e), that states: *An application shall be*
16 *determined to be timely filed if it is filed within 90 days of a victim incurring a reimbursable loss and no*
17 *earlier reimbursable loss had previously been incurred.*

18 Christine N. is not able to avail herself of this exception because her application had previously
19 been processed and approved on September 27, 1999, for a qualifying crime that occurred on October
20 2, 1998. Her claim for reimbursement of income loss for the period of October 3, 1998, through March
21 14, 1999, was denied by Program staff because it was determined that Christine N. was fully
22 reimbursed from monies received from restitution and automobile insurance. Therefore, she cannot
23 claim that no earlier reimbursable losses had previously been incurred.

24 The statutes and regulations that govern the Program do not support Christine N.'s argument
25 that her supplemental application should be analyzed under the Program's current statutes and
26 regulations. Thus, it is determined that Christine N. is not eligible for additional income loss
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1 compensation. However, Christine N. may be eligible for other forms of compensation up to the
2 statutory maximum compensation of \$46,000.00, dependent on proof.

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4 Dated: October 7, 2009

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6 Kyle Hedum
7 Hearing Officer
8 California Victim Compensation and
9 Government Claims Board
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