

## APPEALS PROCESS

(37 Pa Code §411.18, §411.31 & §411.32)

Outlined below is an overview of the Appeal process that the VCAP uses when a claimant disagrees with the VCAP's decision and seeks to appeal the decision. Some of the steps described are mandated by law; others are within the discretion of the VCAP.

### **Request for Reconsideration**

#### *What the claimant must do:*

When the VCAP issues an award decision or a denial on a claim to the claimant, a "Request for Reconsideration" form is attached. **If the victim/claimant disagrees with the VCAP's decision, he/she must complete and return the form to the VCAP within 30 days from the date of the decision** (exception outlined below) **along with the check that may have accompanied the decision.** This form will instruct the claimant to list each decision that the claimant feels the VCAP made in error and the reason why. Any additional information that the claimant would like the VCAP to consider should also be included.

**NOTE:** A Request for Reconsideration must be completed and signed by the claimant. An advocate may assist the claimant in writing the appeal, however, the claimant must sign.

**Exception:** If a request for reconsideration is not filed within the time required, the decision becomes final. A delay past the prescribed time period may be considered to be justified when one of the following circumstances exist:

- The direct victim or claimant is mentally or physically incapacitated.
- Other circumstances where good cause is shown by the claimant and deemed appropriate by VCAP. (Reviewed on a case by case basis)

**NOTE:** A claimant may not accept a portion of an award determination and reject another portion of the same determination. If a claimant desires to contest a portion of the determination, no payments can be made and the claimant shall contest the entire determination.

### **Reconsideration or Reaffirmation**

#### **What the VCAP will do:**

Upon receipt of a "Request for Reconsideration" the file will be given to the Claims Review Officer who worked on the claim to review for the following:

1. If the claimant is rejecting the decision because he/she is requesting that a new bill be considered, the VCAP staff member may by telephone give the claimant the option to withdraw the "Request for Reconsideration" and process the bill as a supplemental award, thereby not affecting the award already in process.
2. If a Request for Reconsideration is received (based on the postmark date, not the date of receipt) past the 30-day time period and the delay is not justified, the VCAP decision becomes final.

3. If the claimant submits a Request for Reconsideration within the 30-day time period, but indicates that supporting documents have been requested and will be provided, the Claims Review Officer will hold the claim for 30 days. If the additional information is not received within the additional 30 days, the VCAP will reaffirm the original decision.
4. If a Request for Reconsideration of a contribution assessment or a denial is received, the claim is forwarded to the Claims Review Officer who made the decision to determine whether sufficient information exists to make a change or warrant further investigation by the VCAP.
5. If a Request for Reconsideration is received because the claimant believes that the VCAP made an error in the award amount (e.g. proven error in calculations or an incorrect deduction in either provider expenses or loss of earnings), the Claims Specialist will review and determine whether the new information is sufficient to effectuate a change.
  - a. If sufficient information has been received and the Claims Specialist determines that the decision should be changed, he/she will update the DAVE system with the additional information and initiate the appropriate paperwork to inform the claimant that the claim has been reconsidered and an award will be made. The decision is mailed to the claimant and a copy is mailed or faxed to the victim service program or attorney, if applicable.
  - b. If no new or substantive information is received, the VCAP will reaffirm the original decision.
  - c. The VCAP may issue the reconsidered determination as a final decision of the agency if it determines that the facts developed in the claims determination process establish that a particular determination is warranted as a matter of law.

### **Request for a Hearing**

#### **What the Claimant must do:**

When the VCAP reaffirms a decision, the “Reaffirmation” is mailed along with a cover letter that outlines what the claimant must do if he/she still disagrees with the VCAP’s decision. An enclosed “Request for a Hearing,” form must be completed and returned to the VCAP within 30 days from the date of the decision (Exception outlined below). This form will instruct the claimant to list each decision that the claimant feels the VCAP has made in error and the reason why. Any additional information that the claimant would like the VCAP to consider should be attached to the “Request for a Hearing.” If the request for a hearing is not filed within the time required, the reconsidered decision becomes a final decision.

**Exception:** A delay past the prescribed time period may be considered to be justified when one of the following circumstances exist:

- The direct victim, intervenor or the claimant is mentally or physically incapacitated.
- Other circumstances where good cause is shown by the claimant and deemed appropriate by VCAP. (Reviewed on a case-by-case basis)

Requests for Hearings are reviewed by the Claims Review Supervisor, Program Manager, and Legal Counsel.

## Consultative Session

### **What the VCAP will do:**

Informal Consultative Sessions may be held with the victim and/or claimant under the following circumstances:

**When a victim/claimant requests a hearing but fails to provide documentation or other evidence to substantiate the facts asserted, the VCAP may conduct a consultative session. The VCAP also may use this procedure at the “Request for Reconsideration” stage. In these circumstances, the purpose of this session is to:**

1. Provide an opportunity for the claimant to discuss the circumstances surrounding his/her victimization and filing of the claim with the VCAP.
2. Provide an opportunity for the claimant to introduce any type of information or documentation that he/she has that may have an impact on the original decision made by the VCAP.
3. Provide an opportunity for the VCAP to review documents and discuss the reasons for the denial or contribution with the claimant. When it is the claimant’s intention to proceed with a formal hearing, the session can provide the opportunity to review with the claimant the requirements and procedures of the hearing.
  - At any stage of the claims process, the VCAP may determine that a Consultative Session would assist the Claims Review Officers in the preparation of a decision.
  - The VCAP will attempt to conduct the Consultative Session at a convenient location that is mutually agreed upon by the VCAP and the claimant. However, in some instances, a telephone conference call may be appropriate.
  - The attendees of the Consultative Session may consist of the claimant, VCAP staff, a facilitator, and if applicable, a victim advocate.

## Hearings

If VCAP is unable to determine if a claim is justified based upon supporting documents, it may proceed with a hearing.

### **Hearing Schedule:**

The hearing officer, who is an independent party with no previous involvement in any aspect of the claim, will conduct the hearing.

1. At least 30 days before the date of the hearing, the claimant, the claimant’s attorney (if one has been designated), and the victim’s advocate will be provided written notice of the time, place and purpose of the hearing.
2. The claimant must provide written confirmation to OVS of the claimant’s intent to attend the hearing, including documentary exhibits to be presented and a list of witnesses which must be received by OVS at least 10 days prior to the hearing date. Failure to comply with the confirmation requirements may result in the cancellation of the hearing.

3. A cancelled hearing may be rescheduled if the claimant shows good cause for failure to comply with the confirmation requirements. A hearing will not be rescheduled more than once, unless OVS deems it necessary.
4. The claimant may subpoena for attendance of witnesses or for production of documentary evidence.
5. Upon a showing of relevancy and materiality, the hearing officer may issue subpoenas for both the OVS and the claimant for attendance of witnesses or for the production of documentary evidence.
6. The hearing officer will liberally allow the admission of evidence that may not conform to the strict rules of evidence under common law or court rules. A stenographer or court reporter shall record the proceedings. Witnesses shall testify under oath.
7. The claimant shall have the burden of proving entitlement to compensation by a preponderance of the evidence.
8. Both OVS and the claimant may present testimony in support of their respective positions and cross-examine the opposing party's witnesses.
9. Hearings generally will be open to the public except that the hearing may be held by camera in any of the following circumstances:
  - Prosecution against the alleged perpetrator of the crime is pending.
  - The welfare and safety of the direct victim, intervenor, or his family or community may be adversely affected by a public hearing.
  - To protect the rights and interests of a minor.

A claimant may have support persons or victim advocates, or both, accompany them. The number of advocates and support persons may be limited by the hearing officer. It is recommended that a victim advocate accompany the claimant to the scheduled hearing.

10. Upon adjourning the hearing, the hearing officer will offer the claimant and OVS an opportunity to file post-hearing briefs, to be filed after the transcript is issued, on a schedule to be determined by the hearing officer.
11. Upon receipt of the transcript from the stenographer, notification will be sent by certified mail to the claimant that the transcript is available and can be purchased at the claimant's own expense.

12. OVS will reimburse claimants \$20 per day for attendance at a hearing. Additional expenses will be reimbursed as follows:
- Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees for travel.
  - Common carrier fares when pre-approved by OVS.
  - Lodging the night before or the night after a hearing session, to a daily maximum of \$75, if the claimant must travel at least 50 miles from home for the hearing.

**NOTE:** *At any point in the hearing stages, VCAP may reverse its decision under appeal by the claimant in order to pay the claim as sought by the claimant.*

**Post hearing:**

1. The hearing officer will issue a report and recommendation which will be delivered to a designated Commission official acting on behalf of OVS who has no previous involvement in the claim.
2. The designated Commission official will review the report and recommendation, the hearing transcript and the documentary exhibits. The designated Commission official may not have access to information not in the hearing record.
3. The designated Commission official may not be advised in the hearing process by an attorney or any OVS staff member who has previous involvement with any aspect of the claim that is being heard. The designated Commission official may request the General Counsel of the Commonwealth to appoint an attorney who has no prior involvement to provide advice on the matter.
4. Upon completing the review of the hearing officer's report and recommendation, the designated Commission official will do one of the following on behalf of OVS:
  - Adopt the hearing officer's report and recommendation as written as a final decision.
  - Modify the report and recommendation and issue the modified document as the final decision.
  - Reject the report and recommendation in its entirety and prepare and issue a final decision for OVS.
5. The designated Commission official will distribute the final decision to the claimant, the claimant's attorney, the victim's advocate, and to OVS.
6. The claimant shall have the right to appeal to Commonwealth Court.