

LOSS OF SUPPORT

(18P.S. §11.707 and 37 Pa Code §411.44)

Who?

LOSS OF SUPPORT CAN ONLY BE PAID IN DEATH CLAIMS.

An eligible person who, as a result of the death of the direct victim, is deprived of the financial support that the victim had been required by court order to provide or had actually been providing at the time of the injury that caused the death. The loss of support must be verifiable by official documentation, normally in the form of either tax returns in which the victim claimed dependents or court-ordered child/spousal support.

Surviving spouses, dependent children, and surviving parents can all be considered for loss of support if they can provide documentation that verifies that the deceased was financially supporting them. Any **other individual** is eligible if they can provide documentation that verifies that the deceased was providing his or her **principal support** (50% or more of claimant's living expenses).

Definition of Support: Includes the gross earnings less estimated tax obligations multiplied by 80%. Gross earnings include all taxable and nontaxable income that terminated at time of death such as wages, business income, retirement payments, Social Security payments and other benefits.

Definition of Dependent Child: The child of a direct victim, or intervenor, on whose behalf regular payments are received for the purpose of whole or partial support and who is one of the following:

- Under 18 years of age including an unborn child.
- 18 years of age or older but under 23 years of age and currently attending secondary school or is a full-time student in a post-secondary education institution.
- 18 years of age or older but unable to provide for his/her own support due to a physical or mental disability.

If the victim was the parent of an unborn child, the surviving parent or guardian may be eligible upon documentation of paternity and evidence that the victim would have provided support (copies of joint mortgages, rental agreements, bank accounts, utilities, etc.) Will be reviewed on case by case basis.

PLEASE NOTE: By law, **VCAP can only make an award for loss of support when documentation exists that the victim had been providing regular support, or was required by court order to provide.** The fact that a victim was the biological parent does not automatically make a child eligible for loss of support under VCAP. Gifts of property or money provided by the victim on special occasions may not be considered as support.

What?

- Maximum allowable award for Loss of Support is **\$20,000 per crime** (not per dependent.)
- Surviving spouses and dependent children will be allocated up to 80% of the net annual earnings of the victim. The 80 percent cap is because it is reasoned that at least 20 percent of what a victim was earning would have gone toward costs not associated with supporting his/her dependents.
- A surviving parent will be allocated the actual amount of support provided by the direct victim not to exceed 80% of the net annual earnings.
- Any other person dependent on the victim for his or her principal support will be allocated the actual amount of support provided not to exceed 80 percent of net annual earnings.
- For dependents whose support was based on a court order of child/spousal support, the allocation will be the amount of the court order including any arrears due the claimant.
- All awards will be offset with other benefits received by the claimant as a result of the crime such as Social Security benefits, survivor pension/annuity benefits, insurance benefits, civil action recovery, Workers' Compensation benefits, and paid restitution.
- Awards may be paid in a lump sum or scheduled over a three- to five-year period depending on the amount of the annual uncompensated loss.
- After the first award, a Protracted Application will be sent to the claimant each year to complete and return to VCAP, prior to each annual award. If an award is paid on an annual payment basis and the claimant receives a new source of support or receives a new benefit that was not introduced at the time of the initial award, payments may be reduced or terminated effective the date the new resource was obtained. The most common example of the claimant receiving a new source of support is through remarriage.
- In cases with multiple claimants, an award for each claim is calculated and allocated according to the amount of financial support that had been provided to each dependent.
- Post Secondary Education/College costs may be considered for loss of support.

How?

When calculating loss of support, VCAP considers the life expectancy or work force expectancy, of the direct victim, as well as the age of the dependent(s). If the victim was not employed at the time of the crime, employment history up to three years immediately preceding the crime may be used to determine support.

NOTE: If a victim has enough work credits, certain family members will most likely be eligible for Social Security benefits:

- **An unmarried child of the deceased who is younger than age 18 or up to age 19 if a full-time elementary or secondary school student;**
- **A spouse who is caring for the deceased's child under the age of 16;**
- **A spouse age 60 or older (age 50 or older if disabled);**
- **Parents age 62 or older who were dependent on the deceased for at least half of their support.**

Application must be made to Social Security for the above benefits as applicable, and either documentation of monthly payments or notification of denial submitted to VCAP prior to VCAP making an award for loss of support.

***Required documentation for COURT-ORDERED SUPPORT:**

1. A copy of the Court Order showing the amount of support ordered, as well as the amount of arrears due the claimant. If not readily available, VCAP will obtain from the Department of Human Services' Bureau of Child Support. To do this, VCAP will need the docket number and case number.
2. Statements for benefits received as a result of the death of the direct victim, such as life insurance, Social Security benefits, or pension/annuity survivor benefits.
3. Guardianship papers, where applicable

Please Note: Even if the victim never paid any child support, as long as there was a current Court Order for Support, an eligible claimant may still be eligible for a loss of support award.

***Required documentation for ALL OTHER SUPPORT:**

1. If the victim was a wage earner, the full name and complete address of the victim's employer.
2. Federal tax returns showing formal dependency, including schedules if applicable, for the years requested, or a written statement that no Federal tax returns were filed. If unavailable, pay stubs, withholding statements or other earnings records for periods immediately prior to the injury. (If providing documentation other than tax returns, documentation must clearly demonstrate that the victim was providing financial support to the dependent.) If the claimant is unable to provide a federal tax return, a state tax return may be substituted (authorization forms are available from VCAP for securing state returns).
3. Statements for benefits received as a result of the death of the direct victim, such as life insurance, Social Security benefits, or pension/annuity survivor benefits.
4. Birth certificates for dependent children. **Note:** If current IRS tax returns list the minor as a dependent of the victim as well as date of birth, in most cases, a birth certificate is not necessary. If needed, VCAP will request.
5. Guardianship papers, where applicable.

6. Evidence that the victim provided financial support through cohabitation can be verified with the victim's name on a lease, mortgage, or utility bills, etc. Reviewed on a case by case basis.
7. If the support is based on a loss of Social Security, Retirement, Disability, etc. income, documentation showing the amount of benefit the victim was providing as well as documentation indicating what amount of the benefit may continue to the claimant.

***Additional Required documentation for College Costs/Post Secondary Education:**

A letter from the dependent child's college registrar verifying that the dependent child is a full time student and the amount paid. Costs considered include tuition, room and board, and books.

NOTE: When loss of support is based on Court Ordered Support, in order for college costs to be considered, the VCAP also requires a copy of divorce decree or other official documentation verifying that the deceased was financially responsible, whole or in part, for dependent child's post secondary education.

****Please Note:** If none of the required documentation is available but the **victim was paying for childcare services** at the time of his/her death, payment for these services may be considered in lieu of support until the child reaches elementary school age (not to exceed the \$20,000 maximum). Considered on a case by case basis depending on documentation provided and reasonableness.

If the victim had been providing childcare services at the time of death, such as a stay-at-home parent, the VCAP may consider in lieu of support costs to continue these services until the child reaches elementary school age (not to exceed the \$20,000 maximum). Considered on a case by case basis depending on documentation provided and reasonableness.

Loss of Support Q & A

- Q** If the victim and claimant were in a same sex relationship, and living together with shared expenses, could the claimant be eligible for loss of support?
- A** *Yes. The claimant would need to submit income tax documentation to show that the victim listed the claimant as a dependent, or the claimant would need to verify the victim was responsible for 50 percent or more of the bills, finances, and cost of their living together. This can be demonstrated with joint bank accounts, both names on a lease or mortgage, both names (or just the victim's name) on utility bills, etc. Case-by-case.*
- Q** In a domestic violence crime when the offender kills the victim and is then sent to jail or kills himself, if the victim did not provide support, would the guardians who obtain custody of the children be able to file a claim for loss of support?
- A** *No. Loss of support is based on the monetary support provided by the victim to his or her dependents. Since the victim had not provided financial support, the dependents would not be eligible for loss of support. VCAP could not consider the loss of support that was being provided by the offender because his illegal activity caused the crime. However, if the victim had been taking care of the children at home and now the guardians of the children must pay for childcare, VCAP could consider a claim for replacement of childcare services.*
- Q** If the victim had a biological child to his first wife and a second child that is his current wife's son, adopted by the victim, would either child be eligible for a loss of support award?
- A** *Yes. Both children could be eligible as long as the mothers were able to show the victim was providing support. Loss of support is based on court-ordered support in effect at the time of death, or on actual support that the victim provided at the time of the crime. Support is generally substantiated through court documentation and tax records. An award for each claim is calculated and allocated according to the amount of financial support that was being provided to each family.*
- Q** If a victim is injured in a crime and slips into a coma, would his/her family be eligible for loss of support?
- A** *No. Loss of support is only awarded in death claims. However, the spouse or person who has Power of Attorney over the victim could file for the victim's loss of earnings. Or, if the victim was providing child care services, such as a stay at home parent, VCAP may be able to reimburse for replacement services.*
- Q** A deceased victim was in arrears and not making payments on a child support order at the time of his/her death. Could the claimant be eligible for loss of support for the child?
- A** *Yes. VCAP would need a copy of the Court Order of child support and also verification indicating the total amount the victim was in arrears at the time of the victim's death.*

- Q** If the victim was not employed at the time of death can the claimant still be eligible for loss of support?
- A** *Yes. VCAP can look at work history three years prior to the crime to determine support.*
- Q** The victim and claimant were not married, however, were involved in a relationship and cohabitated for over ten years. They had two children together. Is the claimant eligible for loss of support? Are the children?
- A** *Yes. The VCAP could substantiate dependency for the children with their birth certificates, as well as documentation showing that the victim and claimant co-habitated. The children would be eligible for up to 80% of the victim's earnings. The claimant would need to show that the claimant provided his/her principal (50% or more) support in order to be eligible for loss of support.*
- Q** The victim's two children were the beneficiaries of her life insurance policy and the policy stipulated that the money would go into a trust for each child until each turned 18 years of age. Will the Program offset this from a loss of support award?
- A** *No. The VCAP will not offset the award because the claimant was not the beneficiary.*
- Q** A man was a victim of homicide. The mother of his four-year-old son filed a claim for compensation. They did not live together, there was no court order of support, no tax returns showing dependency, and no other documentation that the victim provided financial support to the child. Would the claimant be eligible for a loss of support award.
- A** *No. A loss of support award is to compensate an eligible person who is deprived of the financial support that the direct victim had been required by court order to provide or had actually been providing at the time of injury.*
- Q** A 70 year old man was murdered. He was not employed, however, he was receiving a monthly pension in the amount of \$5,500. Is his surviving wife eligible to file for loss of support?
- A** *Yes. Retirement is viewed as income. If the amount stops or reduces due to the victim's death, that is considered a loss of support.*
- Q** Same as above, however, the victim was only receiving Social Security in the amount of \$1,100 a month. Is his surviving wife eligible to file for loss of support?
- A** *Yes. Social Security is viewed as income. If the amount stops or reduces due to the victim's death, that is considered a loss of support.*
- Q** A victim was receiving food stamps and cash assistance, which ceased upon her death. Can a claim for loss of support be filed for her survivors?
- A** *No. Benefits from the Department of Human Services are considered benefits, not income, and are not a basis for loss of support.*