

61—9.37(17A) Waiver from rules. This rule establishes a uniform process for granting waivers from rules adopted by the board governing the crime victim compensation program.

9.37(1) *When waiver is appropriate.* The board may grant a waiver from a rule the board has adopted if the board has rule-making authority to promulgate the rule, and no statute or rule otherwise controls the granting of a waiver from the rule. No waiver may be granted from a rule that defines a term. No waiver may be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

9.37(2) *Criteria for discretionary waivers.* The board may grant a waiver from a rule, in whole or in part, in response to a request from an applicant or on the board's own motion, as applied to a specific claim, if the board finds that:

a. The application of the rule to the claim at issue would result in hardship or injustice to the person seeking compensation; and

b. The waiver would be consistent with the public interest or the public interest will be protected by other means substantially equivalent to full compliance with the rule; and

c. The waiver in the specific case would not prejudice the substantial legal rights of any person.

9.37(3) *Board discretion.* The decision about whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors.

9.37(4) *Criteria for mandatory waivers.* In response to an applicant's request, the board shall grant a waiver from a rule, in whole or in part, as applied to the particular circumstances, if the board finds that the application of the rule in that specific case would not, to any extent, advance or serve any of the purposes of the rule.

9.37(5) *Administrative deadlines.* When the rule from which a waiver is sought establishes deadlines, the board shall balance the specific individual circumstances of the applicant with the overall goal of uniform treatment of all applicants.

9.37(6) *Conditions.* The board may condition the granting of a waiver on reasonable conditions to achieve the objectives of the particular rule in question through alternative means.

9.37(7) *Public availability of waiver decisions.* A board decision granting or denying a waiver shall be included in the board minutes with reference to the following:

a. The particular case and the rule or portion thereof to which the decision pertains;

b. The relevant facts and reasons upon which the action is based; and

c. The scope and operative period of the waiver if one is issued.

Subject to the provisions of Iowa Code section 17A.3(1) "e," the department shall maintain a record of all orders granting and denying waivers under this chapter. All waiver decisions shall be indexed and available to members of the public at the crime victim assistance division office.

9.37(8) *Voiding or cancellation.* A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver upon notice to the victim by regular mail and an opportunity to be heard, if:

a. The facts as stated in the request are not true or material facts have been withheld, or

b. The applicant has failed to comply with the conditions of the waiver.

9.37(9) *Effectiveness of waiver.* After the board issues a waiver, a person seeking compensation may rely on the terms of that waiver for the purposes of the particular case for which it was issued. A waiver shall only be effective in the case for which it is issued.

9.37(10) *Appeals from waiver decisions.* Any request for an appeal from a decision granting or denying a waiver shall be in accordance with the procedures provided in Iowa Code chapter 17A and the board's rules. An appeal shall be taken within 30 days of the issuance of the waiver decision unless a contrary time is provided by rule or statute.