

28.05.01.00¹

Title 28 OFFICE OF ADMINISTRATIVE HEARINGS

Subtitle 05 COMPENSATION TO INDIVIDUAL ERRONEOUSLY CONVICTED, SENTENCED, AND CONFINED

Chapter 01 Compensation to Individual Erroneously Convicted, Sentenced, and Confined

**Authority: State Finance and Procurement Article, §10-501, Annotated Code
of Maryland**

28.05.01.01

.01 Purpose.

This chapter supplements the procedures for adjudicating a [request] *petition* for order of eligibility for compensation [and a petition for supplemental compensation] as required by law.

¹ General key:

Proposed deleted items appear in brackets ([]).

Proposed amendments/additions appear in *italics*.

28.05.01.02

.02 Scope.

A. Applicability. This chapter applies to a [request] *petition* for an order of eligibility for compensation [and a petition for supplemental compensation] made in accordance with State Finance and Procurement Article, §10-501, Annotated Code of Maryland.

B. This chapter shall be construed to ensure the fair and expeditious review of each [request or] petition *for an order of eligibility for compensation*.

C. The adjudication of a [request] *petition* for an order of eligibility for compensation [or a petition for supplemental compensation] is a contested case proceeding subject to State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and the Rules of Procedure found in COMAR 28.02.01.

28.05.01.03

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “ALJ” means an individual:

(a) Appointed by the Chief Administrative Law Judge under State Government Article, §9-1604, Annotated Code of Maryland; or

(b) Designated by the Chief Administrative Law Judge under State Government Article, §9-1607, Annotated Code of Maryland.

(2) “Application” means a written application for reasonable attorney’s fees and expenses under State Finance and Procurement Article, §10-501(c)(3) or (d)(1)(ii), Annotated Code of Maryland.

(3) “Chief Judge” means the Chief Administrative Law Judge of the Office.

(4) “Claimant” means an individual who files a [request] *petition* for an order of eligibility *for compensation* under State Finance and Procurement Article, §10-501, Annotated Code of Maryland.

(5) “Filed” means that a document is postmarked or received in accordance with Regulation 28.02.01.04D.

(6) “Office” means the Office of Administrative Hearings.

(7) “Other benefits” means those services provided by a State service provider identified in State Finance and Procurement Article, §10-501(a)(2), Annotated Code of Maryland.

[(8) “Petition for supplemental compensation” means a request for an order of supplemental compensation under State Finance and Procurement Article, §10-501(c)(3), Annotated Code of Maryland.

(9) “Petitioner” means an individual who files a petition for supplemental compensation under State Finance and Procurement Article, §10-501(c)(3), Annotated Code of Maryland.

(10) “Request”] (8) “*Petition*” means a request for order of eligibility for compensation under State Finance and Procurement Article, §10-501, Annotated Code of Maryland.

(9) “*Qualifying conviction*” means a criminal offense for which a claimant may recover under State Finance and Procurement Article, § 10-501, Annotated Code of Maryland.

28.05.01.04

.04 Filing and Service of a [Request] *Petition* for Order of Eligibility.

A. A claimant requesting an order of eligibility shall file the [request] *petition* with the Office as required by State Finance and Procurement Article, §10-501(b)(3), Annotated Code of Maryland, COMAR 28.02.01.04D, and this chapter.

B. The [request] *petition* shall be captioned “In the Matter of the Wrongful Conviction of (Claimant(s)) v. Board of Public Works.”

C. The [request] *petition* shall include:

- (1) The name of the county where the alleged erroneous judgment of conviction for a [felony] *qualifying conviction* was entered;
- (2) The name of the current State’s Attorney in the county where the alleged erroneous judgment of conviction for a [felony] *qualifying conviction* was entered;
- (3) The conviction date; and
- (4) The duration of the alleged erroneous confinement.

D. A claimant may initiate a [request] *petition* for order of eligibility by filing a form substantially similar to that in [Appendix A](#) of this chapter.

E. A [request] *petition* for order of eligibility shall be served on:

- (1) The current State’s Attorney in the county where the alleged erroneous judgment of conviction for the [felony] *qualifying conviction* was entered; and
- (2) The Office of the Attorney General.

[28.05.01.05

.05 Filing and Service of a Petition for Order of Supplemental Compensation.

A. A petitioner requesting an order of supplemental compensation shall file the petition with the Office as required by State Finance and Procurement Article, §10-501(c)(3), Annotated Code of Maryland, COMAR 28.02.01.04D, and this chapter.

B. The petition shall be captioned: “In the Matter of the Wrongful Conviction of (Claimant(s)) v. Board of Public Works.”

C. The petition shall include:

- (1) The date or dates on which the previous compensation was awarded;
- (2) The amount of the previous compensation;
- (3) The conviction date; and
- (4) The duration of the alleged erroneous confinement.

D. A petitioner may initiate a request for order of supplemental compensation by filing a form substantially similar to that in [Appendix B](#) of this chapter.

E. A petition for order of supplemental compensation shall be served on:

- (1) The current State’s Attorney in the county where the alleged erroneous judgment of conviction for the felony was entered; and
- (2) The Office of the Attorney General.]

28.05.01[.06] .05

[.06] .05 Prehearing Conference.

A. Upon receipt of a [request or a] petition, the Office will schedule a prehearing conference.

B. The Office will send to all parties:

- (1) Notice of the prehearing conference;
- (2) Instructions for the prehearing conference; and
- (3) An identification of benefits form substantially similar to that in [Appendix C](#) of this chapter.

C. The prehearing conference may address any issue set out in COMAR 28.01.02.17C and shall address the following matters:

- (1) Scope of any evidentiary hearing, including the application of a clear and convincing burden of proof;
- (2) Stipulations;
- (3) Subpoenas duces tecum for records;
- (4) Participation of each party in each stage of the proceedings;
- (5) Motions;
- (6) [For a request, identification] *Identification* of the asserted factual basis for eligibility under State Finance and Procurement Article, §10-501(b)(1)(ii), Annotated Code of Maryland;
- [(7) For a petition, identification of the asserted factual basis for eligibility under State Finance and Procurement Article, §10-501(c)(3), Annotated Code of Maryland;]
- [(8)] (7) Identification of any requested benefit and State service provider under State Finance and Procurement Article, §10-501(a)(2), Annotated Code of Maryland;
- [(9)] (8) Scheduling of any post-hearing process, as necessary, to determine requested benefits;

[(10)] (9) Applications for reasonable attorney's fees and expenses;

[(11)] (10) Alternative dispute resolution;

[(12)] (11) Scheduling; and

[(13)] (12) Any other matter that will promote the order and prompt resolution of the [request or] petition.

D. Conduct.

(1) All parties shall participate in the prehearing conference.

(2) The ALJ shall record the prehearing conference.

(3) The ALJ shall issue a prehearing conference order setting forth the actions taken or to be taken regarding the matters addressed at the prehearing conference.

(4) The prehearing order shall be part of the case record.

28.05.01[.07] .06

[.07] .06 Application for Reasonable Attorney's Fees and Expenses.

A. Within 15 days of the conclusion of the evidentiary hearing, the claimant may file a written request for reasonable attorney's fees and expenses under State Finance and Procurement Article, §10-501[(c)(3) or](d)(1)(ii), Annotated Code of Maryland.

B. The claimant shall submit supporting documentation, including time records, with the application.

C. The claimant shall serve the application and supporting documentation on all parties to the proceeding.

D. A party may file a response to the application within 15 days after the date the application was filed.

E. If the ALJ determines that the record is insufficient for review of the application, the ALJ may order the claimant [or petitioner] to supplement the record.

F. The ALJ shall include a ruling on the application in the final order pursuant to State Finance and Procurement Article, §10-501(d)(1)(ii), Annotated Code of Maryland.

G. Only one attorney will be compensated unless the participation of more than one attorney is justified for a specific purpose.

H. The ALJ may consider the following factors when awarding attorney's fees:

- (1) The time and labor required;
- (2) The novelty and difficulty of the questions;
- (3) The skill required to perform the legal service properly;
- (4) Whether acceptance of the case precluded other employment by the attorney;
- (5) The customary fee for similar legal services;
- (6) Any time limitations imposed by the client or the circumstances;
- (7) The amount of compensation involved and the results obtained;

- (8) The experience, reputation, and ability of the attorneys;
- (9) The undesirability of the case;
- (10) The nature and length of the professional relationship with the client; and
- (11) Awards in similar cases.

I. Guidelines regarding hourly rates are as follows:

- (1) Lawyers admitted to the bar for less than or equal to 8 years: \$125—\$225.
- (2) Lawyers admitted to the bar for 9—14 years: \$165—\$300.
- (3) Lawyers admitted to the bar for 15 years or more: \$200—\$400.
- (4) Paralegals and law clerks: \$75—\$100.

28.05.01[.08] .07

[.08] .07 Final Decisions.

A. If an ALJ finds that the claimant [or petitioner] has proven the elements required under State Finance and Procurement Article, §10-501[(d)](b), Annotated Code of Maryland, the ALJ shall issue a decision finding the [individual] *claimant* eligible for compensation and benefits.

B. The ALJ shall include in the decision:

- (1) The monetary award;
- (2) Reasonable attorney's fees and expenses;
- (3) Benefits to be awarded; and
- (4) If the ALJ determines that it is in the interests of the claimant [or petitioner], a recommendation for an expedited payment schedule.

C. The Office shall deliver the decision to:

- (1) Each party or party representative;
- (2) The Board of Public Works; and
- (3) Any State agency or State service providers ordered to provide benefits.

D. The ALJ's decision is the final agency decision for the purpose of judicial review.

28.05.01.9999

Administrative History

Effective date:

Regulations .01—.08 adopted as an emergency provision effective July 16, 2021 (48:17 Md. R. 666); emergency provision expired effective December 13, 2021

Regulations .01—.08 adopted effective December 13, 2021 (48:25 Md. R. 1081)