

 Corrections and Community Supervision DIRECTIVE	TITLE Incarcerated Individual Personal Property Claim		NO. 2733
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SUPERSEDES DIR #2733 Dtd. 04/26/19	DISTRIBUTION A B	PAGES PAGE 1 OF 8	DATE LAST REVISED
REFERENCES (Include but are not limited to) State Finance Law, Section 8(12); ACA Expected Practices 5-ACI-3D-08; Directives #4911, #4912, #4913	APPROVING AUTHORITY 		

- I. DESCRIPTION/OVERVIEW:** This directive sets forth the claim filing and processing procedure for incarcerated individuals who file claims to recover the value of personal property which has been lost, damaged, or destroyed while they have been in custody of the Department of Corrections and Community Supervision (DOCCS). Such claims may originate from acts of other incarcerated individuals or improper acts or omissions of DOCCS employees or agents. An incarcerated individual will be required to release New York State from further liability for a specific loss if they elect to accept a payment offered under this administrative mechanism.
- II. POLICY:** It is DOCCS policy to:
- Pay legitimate claims promptly and in reasonable amounts
 - Expeditiously reject claims that are without merit
 - Use claims as a management tool to identify problem areas and take corrective action
- III. ADMINISTRATIVE INCARCERATED INDIVIDUAL PERSONAL PROPERTY CLAIM REVIEW PROCESS:** DOCCS has a two-tier system of administrative review for incarcerated individual personal property claims. The system is intended to resolve as many claims as equitably and promptly as possible to reduce the number of claims handled by the Court of Claims.
- A. **Initial Review:** All claims are filed with and reviewed by the Deputy Superintendent for Administration (DSA) or functional equivalent. This claim reviewer is responsible for ensuring the claim is processed within the guidelines set forth in Sections IV, V, and VI. The claim reviewer makes the initial decision to deny or approve the claim and communicates that decision, in writing, to the incarcerated individual claimant by completing Part 3 of [Form #1421](#), "Incarcerated Individual Claim Form."
- B. **Appeal:** If the incarcerated individual claimant desires further review, they may appeal as follows by completing Part 4 of [Form #1421](#):
- **Appeal of Claims up to \$500:** The appeal shall be reviewed and decided by the facility Superintendent or designee.
 - **Appeal of Claims over \$500:** The appeal shall be made to the Division of Budget and Finance's Office of Incarcerated Individual Accounts.

The claim appeal reviewer shall examine the entire record, secure additional information as needed, and render a decision by completing Part 5 of [Form #1421](#). The initial claim decision may be reversed only when principles outlined in Sections III, V, and VI were not completely observed.

No further administrative review is available after appeal. The remaining option is pursuing the claim in the Court of Claims, provided the administrative remedy established by this directive is exhausted and provided such claim is filed and served within 120 days after the date on which the administrative remedy is exhausted, as provided by law.

IV. PROCEDURAL GUIDELINES/REFERENCES

- A. Time Frames: The incarcerated individual claimant must report the loss as soon as possible after its discovery. The report should be made in writing to the incarcerated individual's Block Officer, Area Sergeant, or other Area Supervisor and noted in the area logbook. Failure to timely report the loss increases the likelihood that the claim will be rejected. Chances of recovery or an accurate determination of the cause of the loss are best when losses are promptly reported. Documentation of the loss report and the recovery efforts will greatly assist claim processing.
1. Within Five Days: The incarcerated individual must file [Form #1421](#) within five working days after the discovery of loss, with the facility DSA or functional equivalent. This time frame should be interpreted with some flexibility. There may be extenuating circumstances which would call for discretion to excuse late filing, including but not limited to:
 - a. The incarcerated individual was in transit at the time of the loss, in an outside hospital, en route to a new facility, or in restricted housing where access to required proof and forms may be limited
 - b. The incarcerated individual was ill or otherwise unable to pursue the claim
 - c. It was unclear whether a loss had occurred (e.g., facility staff indicates they are still checking to find the property in question)
 - d. Other unusual situations.
 2. Initial Review: The initial review of the claim should be completed within 15 working days of receipt by the reviewer and include written notification to the incarcerated individual on the status of the claim and requests for any information needed from the incarcerated individual to continue the claim process.
 3. The claim's status will be reviewed 30 days after the initial review is completed as a follow-up to its progress. The incarcerated individual will receive written notification of its status at this time.
 4. Decision: A claim must be disposed within three months.
 5. Appeal: An incarcerated individual must file a claim appeal within five working days after disapproval of the claim. Failure to file within this time frame may result in the case being closed. The claim appeal review must be completed within 15 working days from receipt by the reviewer.
- B. Claim Processing Procedures
1. The facility in which the incarcerated individual is housed at the time the claim is filed is responsible for investigating and processing all forms which must be completed in accordance with this directive. In case of a transfer, the facility in which the loss occurred must cooperate with the processing facility and provide investigative assistance as requested.

2. Claim Limits/Statutory References/Loss resulting from:
 - a. Actions of another incarcerated individual: \$350 limit - see Section 8(12), State Finance Law; or
 - b. Tort of officer or employee: \$5,000 limit - see Section 8(12-A), State Finance Law.
3. The facility in which the claim was filed is responsible for payment of any approved claim. The incarcerated individual shall sign the "Release" section of the New York State Attorney General's (AG) [Form #1144](#), "Claim and Release Form," upon acceptance of the offer set forth in an approved claim.
 - a. Claims up to \$1,000: All approved claims \$1,000 or under are to be paid from facility appropriations. All support forms, investigation reports, etc., must be retained by the facility for post-audit review.
 - b. Claims over \$1,000: All claims approved at the facility level for over \$1,000 must be reviewed and approved in sequence by the Superintendent, the Division of Budget and Finance's Office of Incarcerated Individual Accounts, and the AG. After summarizing the investigation in the "Claim" section of [Form #1144](#), the Superintendent shall insert a statement that the replacement costs and damages proposed by the claimant have been examined and found to be reasonable and proper, and then sign the form. The completed [Form #1144](#) and all related documentation shall then be forwarded to the Division of Budget and Finance Office of Accounts. Upon approval, the Office of Incarcerated Individual Accounts will forward the package to the AG. If the AG approves, the Office of Incarcerated Individual Accounts will return the package to the facility, which will then process the voucher to the Office of the State Comptroller (OSC) for payment.

The following approvals are required:

	Claims		Appeals	
	0-1000	1001-5000	0-500	501-5000
Facility DSA	•	•		
Facility Superintendent		•	•	
Dep. Commissioner Admin. Svcs.		•		•
Department of Law		•		•*
State Comptroller	•	•	•	•

* If over \$1,000.

V. GENERAL PRINCIPLES: The following principles must be applied to the claim review process:

- A. **Requirements:** In order to approve payment of a claim for the loss of an incarcerated individual's personal property, the reviewer must determine:
1. That the incarcerated individual has made a timely claim.
 2. That the incarcerated individual has satisfactorily proved ownership or authorized possession of some or all of the property.
 3. That DOCCS or its agents have been negligent and that such negligence caused the loss of some or all of the property.
 4. Whether or not the incarcerated individual contributed to the loss of the property.
 5. The proper amount to be paid.

- B. **Timeliness Issues:** Section III requires the incarcerated individual to report the loss as soon as possible after the discovery of the loss and to file the claim within five working days.

This time frame should be interpreted with some flexibility. There may be extenuating circumstances which would call for discretion to excuse late filing, including:

1. The incarcerated individual was in transit at the time of the loss, in an outside hospital, en route to a new facility, in restricted housing where access to required proof and forms may be limited, or the incarcerated individual was ill or otherwise unable to pursue the claim;
 2. It was unclear whether a loss has occurred (e.g., facility staff indicates they are still checking to find the property in question); or
 3. Other unusual situations.
- C. **Ownership or Possession:** Ownership or possession of the items claimed must be proved in some reasonable fashion. In this regard, copies of the following are acceptable:
1. Package room receipts;
 2. Mailroom receipts;
 3. Commissary receipts; or
 4. [Form #2064](#), "Personal Property Transferred," (see Directive #4913, "Incarcerated Individual Property") and related records.

Other appropriate proof may be accepted as long as it adequately describes the item and indicates authorized possession by the incarcerated individual claimant. The courts sometimes accept oral proof for good reasons; DOCCS may follow suit.

- D. **Liability of DOCCS or its Agents:** There are two kinds of circumstances in which to evaluate liability: (1) The property was last known to be in the control of the incarcerated individual; or (2) The property was last known to be in the control of DOCCS or its agents.

1. **Property Last in Control of Incarcerated Individual:** When property is last in the control of the incarcerated individual claimant (e.g., in the incarcerated individual's cell or locker, or on the incarcerated individual's person), there is no presumption that its unexplained loss is the fault of DOCCS or its agents. Nonetheless, there may be an explanation which shows that the loss was caused by the negligence of DOCCS or its agents.

DOCCS staff would be negligent if they failed to carry out, in an acceptable way, its responsibility to take reasonable steps to protect the incarcerated individual's property.

Examples of negligence by DOCCS or its agents include, among other things:

- a. Failure to follow required procedures which permit another person to steal, damage, or destroy an incarcerated individual's property; or
 - b. Negligently creating a flood, fire, or other accident which causes a loss.
2. **Property Last in Control of DOCCS**
 - a. **General:** When an incarcerated individual's property is last in the control of DOCCS or its agents, and DOCCS fails without good explanation to deliver it to the incarcerated individual or the incarcerated individual's designee in the same condition as when received by DOCCS, then there is a rebuttable presumption that DOCCS is responsible for the loss. In order to rebut the presumption of responsibility, it must be shown to the reviewer that all DOCCS staff whose duty it was to protect the incarcerated individual's property carried out their duties in an acceptable way. If that is not shown or if it is shown that DOCCS staff failed to meet their responsibilities, then DOCCS will be deemed to have been negligent and, therefore, responsible.
 - b. **Shipment:** When an incarcerated individual's property is lost in the process of shipment from a DOCCS facility by DOCCS staff, there is a rebuttable presumption of negligence by DOCCS. The presumption may be rebutted if the investigation shows, for example:
 - (1) That DOCCS did not receive the property for shipment;
 - (2) That DOCCS received the property but delivered it to a shipper who could reasonably be expected to deliver it in good condition to its intended destination; or
 - (3) That the property was received at its intended destination in the same condition as when received by DOCCS.

- E. **Comparative Liability of the Incarcerated Individual Claimant:** If the investigation reveals there was negligence both by DOCCS or its agents and the incarcerated individual claimant which contributed to the loss, the claim reviewer must determine "comparative fault" and use that percentage in calculating the proper amount to be paid. For example, if the investigation reveals that the incarcerated individual contributed 75% to the loss and DOCCS contributed 25%, then the reviewer should approve payment of no more than 25% of the amount which would otherwise be approved.

F. Valuation and Proper Amount to be Paid

1. **General:** The value of property is a reasonable level of compensation, taking into consideration the age, condition, original cost, and market value of the items. In the case of damaged property, the value is the lower of: (1) The cost to repair or restore the property to its condition at the time of loss; or (2) The cost to replace the property considering its age and condition. If DOCCS replaces an item, the old item will be confiscated and disposed of as indicated on [Form #2068](#), "Authorization for Disposal of Personal Property" (see Directive #4913).

The proper amount to be paid must be no more than the reasonable value of the property. There are circumstances when the proper amount to be paid should be less than the value of the property.

If the value of an item which the incarcerated individual was permitted to possess exceeds the limitations of Directives #4911, "Packages & Articles Sent or Brought to Facilities," #4912, "Maintenance of Living Quarters," or #4913, then the proper amount to be paid for that item is no more than the amount of the applicable limitation. If such an item is in DOCCS control because the incarcerated individual is not permitted to possess it, then the amount to be paid for the loss of the item may exceed the limitations of the directives.

Refer to Directives #4911, #4912, and #4913. These directives should be uniformly enforced to limit the cost and amount of incarcerated individual personal property in the facility.

2. **Items of Sentimental or Artistic Value:** It is not possible to evaluate the sentimental value of items such as personal photographs, writings, or mementos, or the artistic value of personal artwork or handicrafts. Such items can only be evaluated for their intrinsic value unless there is some proof of actual market value, such as an appraisal of a painting.
3. **Lost Legal Papers:** If the lost legal papers can still be used in a pending or future legal proceeding, then the loss may be compensated by either replacing the papers or paying the reasonable cost to reproduce them. If an incarcerated individual claims that there is a cost to reproduce the lost papers, then the incarcerated individual should produce an estimate for the cost to reproduce the lost papers, which normally should not exceed the cost shown in the bill for the original papers.
4. **Payment:** The amount to be paid on a claim for personal property damaged or destroyed by another incarcerated individual of a DOCCS institution shall not exceed \$350 (see State Finance Law Section 8(12)).

The amount to be paid on a claim for loss, damage, or destruction of personal property caused by the tort of a DOCCS officer or employee while acting as such officer or employee shall not exceed \$5,000 (see State Finance Law Section 8(12-A)).

The amount to be paid should not exceed the amount requested by the incarcerated individual. However, the reviewer may approve payment of an amount less than that requested by the incarcerated individual. If the incarcerated individual accepts an offer of a lesser amount, the claim will be processed for that amount. If the incarcerated individual does not respond to the offer within 14 days, it will be deemed a rejection of the offer and the claim will be considered closed.

The amount of any claim payment must be reduced from the value of the property by the amount of any insurance payment or other compensation received from other sources.

The proper amount to be paid as so limited or so reduced must be further reduced to take account of any comparative liability of the incarcerated individual claimant (see subsection V-E).

Claim payments to incarcerated individuals will be deposited to their ICAS account by using ICAS Code 304 – Transfer Funds.

VI. INVESTIGATION REPORT: Investigations are the key to the entire system of incarcerated individual personal property claims review. [Form #1422](#), "Claim Investigation Report," must be filled out completely.

- A. The object of the claims investigation is an impartial and thorough determination of facts. It must:
1. Thoroughly and impartially examine the incarcerated individual's assertions.
 2. Determine whether the incarcerated individual's statements are wholly or partially supported by any other evidence.
 3. Question all persons who could reasonably have information pertinent to the determination of facts.
 4. Obtain signed and dated statements of all individuals questioned and include the statements in the record.
 5. Determine whether the incarcerated individual secured the personal property appropriately and whether the incarcerated individual contributed to the loss in any way (see subsection V-E).
 6. Find out where the property was at the time of loss and who was responsible for the property at the time. Get a signed statement from the individual who was responsible for the property and include the statement in the record.
 7. Ensure that the claim was filed in a timely manner.
 8. Verify that the incarcerated individual adequately proved ownership of the property.
 9. Determine a reasonable level of compensation.

It is the responsibility of the claims reviewer to review the investigation report to ensure its completeness. Incomplete investigation reports must be returned for further information.

- B. At the second-tier appeal stage, the lack of a complete investigation report is reasonable grounds for supporting the original claim. Therefore, it is critical that such investigation reports are done correctly at the initial claims review stage.

VII. ANNUAL REPORT - INCARCERATED INDIVIDUAL PROPERTY CLAIMS: Facilities are required to provide annual reports of incarcerated individual property claims to the Division of Budget and Finance's Office of Incarcerated Individual Accounts. The annual report will reflect the period of April 1 through March 31 and will be due each year on April 15. The report will include the information on each claim as outlined on [Form #2733D](#), "Claims Log."