

## Chapter 45A Administration of Disability Benefits under PERS

### 100 Purpose

The purpose of this regulation is to provide for the rules to be applied in the administration of disability benefits for retirement plans administered by the PERS Board of Trustees.

### 101 Fees for disability determination

The Board of Trustees shall adopt and maintain a schedule of fees for disability determination services which shall be reviewed on a periodic basis.

### 102 Application for disability benefits

1. An active member who became a member of the system before July 1, 2007, and who has at least four (4) years of membership service credit, or an active member who became a member of the system on or after July 1, 2007, who has at least eight (8) years of membership service credit, or a member who is disabled as a direct result of an accident or traumatic event resulting in a physical injury occurring in the line of performance of the job may file an application for disability benefits. Miss. Code Ann. § 25-11-113 (1) (a) and § 25-11-114 (6) (1972, as amended)
2. Any inactive member who became a member of the system before July 1, 2007, and who has four (4) or more years of membership service who has withdrawn from active state service, or any inactive member who became a member of the system on or after July 1, 2007, who has at least eight (8) years of membership service is not eligible for disability retirement benefits unless the disability occurs within six (6) months of termination of active service and unless satisfactory medical evidence is presented to establish that the disabling condition was the direct cause of withdrawal from state service. ~~Miss. Code Ann. § 25-11-113 (1) (b) (1972, as amended)~~

Any inactive member seeking to establish eligibility for regular disability benefits must have met the vesting period for eligibility at the time he or she withdrew from covered employment.

3. Any member who is or becomes eligible for service retirement benefits under ~~Miss. Code Ann. § 25-11-111 (1972, as amended)~~ while pursuing a disability retirement allowance under ~~this section~~ [§ 25-11-113](#) or ~~Miss. Code Ann. § 25-11-114 (1972, as amended)~~ may elect to receive a service retirement allowance pending a final determination of eligibility for a disability retirement allowance ~~or withdrawal of the application for the disability retirement allowance~~ [in accordance with Board Regulation 35, Section 101.2.d](#). In such a case, an application for the disability retirement allowance must be on file with the system before the commencement of a service retirement allowance. If the application for disability benefits is approved, the option selected and beneficiary designated on the retirement application shall be used to determine the disability retirement allowance.

If the application is not approved or if the application is withdrawn or voided pursuant to Board Regulation 35, Section 101.2.e, the service retirement allowance shall continue to be paid in accordance with the option selected. No person may apply for a disability retirement allowance after the person begins to receive a service retirement allowance. No person electing to receive a service retirement allowance while pursuing eligibility for a disability retirement allowance may select Option 6.

4. Any inactive member who is vested for benefits in accordance with § 25-11-113 and who has previously applied for and been denied disability benefits, or whose application is voided pursuant to § 25-11-113 (1) (d) (1972, as amended) and Section 104.2 of this Regulation must return to covered service for a period in excess of six (6) calendar months to be eligible to again apply for non-duty related disability benefits. ~~has four (4) or more years of membership service who became a member of the system before July 1, 2007, or any inactive member who became a member of the system on or after July 1, 2007, who has at least eight (8) years of membership service credit who returns to covered employment, and who applies for non-duty related disability benefits during the first six months after returning to active employment, Upon application for non-duty related disability benefits, such member~~ will be required to establish that he or she was, at the time of such employment, physically capable of performing the job for which he or she was hired. ~~Any inactive member who has terminated covered employment and who has previously applied for and been denied disability benefits shall be ineligible to reapply for disability benefits unless or until such applicant can prove he or she is an actively contributing member of the retirement system reemployed in covered service for a period in excess of six (6) months.~~
5. The beneficiary or beneficiaries of a Any vested member who has filed a claim for disability benefits, regardless of whether he or she has terminated covered service, but who dies prior to the review and determination of his or claim by the PERS Medical Board shall be eligible for death benefits, in the form of ~~including~~ spouse/survivor benefits or a refund of contributions, unless an PERS Form 16, Advanced Application, for Optional Settlement has been completed prior to death and is on file with PERS.
6. The beneficiary or beneficiaries of a Any vested member who has filed a claim for disability benefits whose claim has been approved by the Medical Board ~~to receive such benefits~~ but who dies after approval but prior to termination from covered service, ~~shall be paid disability benefits under the provisions of the optional benefit payment plan selected on his or her disability application.~~ shall be eligible for death benefits, in the form of spouse/survivor benefits or a refund of contributions, unless a PERS Form 16, Advanced Application, has been completed prior to death and is on file with PERS.

**103 Effective date of benefits**

1. The effective date of benefits shall be the first of the month following receipt of an application for a disability retirement allowance, but in no event before termination of state service. ~~Miss. Code Ann. § 25-11-113 (1) (a) (1972, as amended)~~
2. For purposes of determining the effective date of benefits as referenced in number one (1) above, termination from covered service shall mean the cessation of the employee-employer relationship as characterized by resignation or termination from employment, with or without cause. While a member may not be performing the duties of the job, if the member has not resigned or been terminated by the employer, the member is still considered employed and thus, ineligible for initiation of disability retirement benefit payments. In cases where the member is on authorized leave without pay or administrative leave or is receiving Workers' Compensation benefits, such member is considered an employee of the agency, and thus, not eligible to receive disability retirement benefit payments.

**104 Medical determination of eligibility for disability benefits**

1. The employer must provide the following information which will be considered by the Medical Board in its determination for eligibility:
  - a. The job description and duties of the member; ~~Miss. Code Ann. § 25-11-113(1)(a) (1972, as amended)~~
  - b. Whether the employer has offered the member other duties without material reduction in compensation; ~~Miss. Code Ann. § 25-11-113 (1) (a) (1972, as amended)~~
  - c. Whether the employer has complied with the applicable provisions of the Americans with Disabilities Act in affording reasonable accommodations ~~which~~ **that** would allow the employee to continue employment; § 25-11-113 (1) (a) and ~~Miss. Code Ann. (1972, as amended)~~
  - d. In the case of an application for ~~hurt on the job~~ **duty-related disability** benefits, the employer shall certify whether, to the best of its knowledge, an accident or traumatic event resulting in a physical injury occurred. ~~Miss. Code Ann. § 25-11-114 (8) (1972, as amended)~~
2. The member shall submit medical evidence of the disability to the Medical Board for review. The Medical Board may require an independent medical evaluation or such other examination or report as is necessary to determine the member's eligibility for benefits. ~~Refusal to submit to such examination, or to otherwise provide the requested additional information within ninety (90) days of such request, shall result in the member's application being considered void.~~ **Failure to provide the requested information within ninety (90) days of such request or refusal to submit to an examination shall result in the member's application being considered void.** ~~Miss. Code Ann. § 25-11-113 (1) (d e) (1972, as amended)~~

In order to be considered eligible for disability benefits the Medical Board, must certify to the Board of Trustees that the member is i) mentally or physically incapacitated for the further performance of duty, (ii) that such incapacity is likely to be permanent, and (iii) that the member should be retired.

The Board of Trustees does not automatically accept a Social Security Administration disability determination as evidence of disability benefit eligibility. If, however, a Social Security Administration disability benefit determination has been received during the medical evaluation process, such determination, along with, (i) the supporting medical documentation, (ii) the condition upon which PERS disability benefits are claimed, and (iii) the facts of the case, will be taken into consideration as a part of the Medical Board's independent evaluation and determination. ~~Miss. Code Ann. § 25-11-113 (1) (a) (1972, as amended)~~

3. The Medical Board shall certify to the Board of Trustees whether the member, based on the medical evidence, is mentally or physically incapacitated for further performance of duty and that such incapacity is likely to be permanent and whether, based on all other facts, the member should be retired on a disability allowance. In making this determination, the Medical Board shall use the following definition:

Disability shall be defined as the inability to perform the usual duties of employment or the incapacity to perform such lesser duties, if any, as the employer, in its discretion may assign without material reduction in compensation, or the incapacity to perform the duties of any employment covered by the Public Employees' Retirement System that is actually offered and is within the same general territorial work area, without material reduction in compensation. ~~Miss. Code Ann. § 25-11-113 (1) (a) (1972, as amended)~~ As part of the determination process, the Medical Board shall consider certification from the employer as to whether or not reasonable accommodations have been requested by the employee and agreed to by the employer as provided under the Americans with Disabilities Act.

For purposes of disability determination, a material reduction in compensation shall be defined as a salary not in excess of ten percent (10%) less than the current salary of the applicant.

4. In applying for ~~job~~ duty-related disability benefits, a member must provide medical proof satisfactory to the Medical Board that his disability is a direct result of an accident or traumatic event resulting in a physical injury occurring in the line of performance of duty. In addition, permanent and total disability resulting from a cardiovascular, pulmonary or

musculoskeletal condition ~~which~~ that was not a direct result of a traumatic event resulting in a physical injury occurring in the performance of duty shall be deemed an ordinary disability. A mental disability based exclusively on employment duties occurring on an ongoing basis shall be deemed an ordinary disability. Further, the employer must certify on a form prescribed by PERS or by means of other acceptable documentation that an accident or injury has occurred in the performance of duty which precipitated the employees' claim for disability benefits. Acceptable documentation may include an accident or injury report, a Workers' Compensation claim form or such other similar document signed by an authorized representative of the employing agency as proof of the occurrence of an event in the nature of an accident or injury while on the job. ~~An on-the-job~~ duty-related disability benefit determination by PERS is independent of any determination of benefit eligibility which may be made by an insurance company or other agency of the State. ~~Miss. Code Ann. § 25-11-114 (6) (1972, as amended)~~

5. No inactive member shall be eligible to apply for ~~hurt-on-the-job~~ duty-related disability benefits regardless of years of service if withdrawal from service occurred prior to the July 1, 1984, the date that such benefits were authorized in the PERS law.
6. Any active or inactive member must provide a statement certifying all gainful employment at the time the disability is claimed, whether such employment is covered employment or not.
  - a. Any inactive member applying for disability after one calendar year from date of termination from covered service must provide copies of tax returns with corresponding income documentation to provide information as to the type of employment and income from any gainful occupation during the period of inactive service.
  - b. Where the inactive member is found to have engaged in any gainful occupation paying an amount equal to or more than the average wage used in calculating the benefits, the inactive member shall be deemed ineligible for benefits.
7. If the Medical Board determines that a member is not eligible for disability benefits, a final administrative determination will be issued to the member. The member may appeal the determination to the Board of Trustees in accordance with the provisions of Regulation 42 and Miss. Code Ann. § 25-11-120 (1972, as amended). ~~and Regulation 42~~
8. Upon certification of eligibility by the Medical Board, if the Board of Trustees concurs with such report of eligibility, the member will be added to the retiree payroll. The Board of Trustees authorizes the Executive Director to initiate benefits on behalf of the members who are certified by the Medical Board as being disabled in accordance with the statutes in order to ensure timely payment of benefits to such members, provided that the Executive Director shall present such approved members along with any supporting information to the Board of Trustees for ratification at a subsequent meeting of the Board.

**105 Continuing qualification for disability benefits**

1. Disability retirees under the age of sixty (60) or until the termination age of the temporary allowance under. ~~Section~~ § 25-11-113 (2) (c) shall be required to submit to medical reexaminations once each year during the first five (5) years following retirement on a disability retirement allowance and once in every period of three (3) years thereafter, unless otherwise determined by the Medical Board. The Medical Board may specify both the frequency and the nature of such reexamination. Upon the attainment of age 60 or upon the attainment of the termination age of the temporary allowance period, any member receiving a disability benefit shall be considered to have retired under a service retirement benefit with no further requirement for reexaminations and with no recalculation of benefits. Disability retirees reaching age 60 or termination age of the temporary allowance shall not be required to submit to medical reexaminations. ~~Miss. Code Ann. § 25-11-113 (3) (1972, as amended)~~
  - a. In the event a disability retiree refuses to provide a physician's statement of reexamination, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all rights to a disability benefit shall be revoked by the Board of Trustees. ~~(Miss. Code Ann. § 25-11-113 (3) (1972, as amended))~~
  - b. If, following reexamination, the Medical Board determines that a employment from which he is retired, the Board of Trustees, upon certification of such finding from the Medical Board, shall terminate the disability allowance as provided hereunder, whether or not the retiree is reemployed or seeks such reemployment. ~~Miss. Code Ann. § 25-11-113 (6) (1972, as amended)~~
  - c. Further, if upon such reexamination, the Medical Board reports and certifies that the disability retiree is engaged in, or is able to engage in, a gainful occupation paying more than the difference, between his disability allowance, exclusive of cost of living adjustment, and his average compensation, and if the Board of Trustees concurs in such report, the disability benefit shall be reduced to an amount ~~which~~ **that**, together with the amount earnable by him, shall equal his average compensation. ~~Miss. Code Ann. § 25-11-113 (4) (1972, as amended)~~
  - d. Disability retirees shall be required to submit annually a copy of their federal income tax return, including supporting documentation, or other earnings statements acceptable to the Board of Trustees, no later than 30 days following the due date of such return. The earnings limitations, pursuant to the statute will be based on the "earned income" of the disability retiree.
  - e. If, based on a review of earnings during the year, the ~~Medical~~ **disability retiree** has earned more than the difference between the disability benefit, exclusive of the cost of living adjustment, and

the average compensation used in calculating the benefit, the benefit shall be reduced to an amount which when added to the disability benefit, exclusive of the cost of living adjustment, shall equal the average compensation. The benefit may be adjusted to recover the excess benefits as well as to recalculate benefits to account for the new earnings capability for the following year. The adjusted benefit will continue to be paid to the extent that the earnings when added to the adjusted benefit as provided above do not exceed the average compensation. ~~Miss. Code Ann. § 25-11-113 (4) (1972, as amended)~~

- f. If documented earnings meet or exceed the average compensation for a period in excess of six (6) months, a medical review shall be required, and the Medical Board shall report to the Board of Trustees whether or not the retiree is mentally and physically able to return to his regular duties or to any gainful employment earning the equivalent of the average compensation and whether or not the eligibility for benefits should be continued. Upon a report and certification by the Medical Board, the Board of Trustees may terminate the disability benefit or continue issuing a reduced benefit based upon the retiree's earning ability. ~~Miss. Code Ann. § 25-11-113 (4) (1972, as amended)~~
- g. If income information is not submitted as required by the Board of Trustees, it will be presumed that the disability retiree is engaged in or is able to engage in a gainful occupation earning more than the average compensation used in calculating the disability benefits, and benefits shall be suspended until such time as the retiree submits proper documentation as required above. ~~Miss. Code Ann. § 25-11-113 (4) (1972, as amended)~~

## **106 Termination of disability benefits**

1. In the event a retiree is determined to no longer qualify for disability benefits, such member will be provided with notice of such determination and benefits will continue for a period of three months unless the retiree has returned to covered employment in the position from which he was retired on disability or to other covered service in which he is earning an amount equal to or more than his average compensation or where such termination is a result of the member's refusal to submit to a medical reexamination, in which case benefits shall be terminated immediately.
2. The Medical Board shall review the objective medical information as with an initial claim for disability benefits and determine whether or not the medical condition for which benefits were previously approved has improved sufficiently to allow a return to previous employment. The Medical Board may also consider additional information concerning any new medical condition which may have occurred while in receipt of disability benefits.

3. Notice of termination of disability benefits shall constitute a final administrative determination, and the retiree may appeal the determination to the Board of Trustees in accordance with the provisions of Regulation 42.

**107 PERS Medical Board**

1. The Board of Trustees may designate a Medical Board to be composed of three (3) physicians or may contract with another governmental agency or non-governmental disability determination service that is qualified to make disability determinations. If required, other physicians may be engaged to report on special cases. A physician shall be considered a medical doctor or a doctor of osteopathy with a license to prescribe drugs.
2. The Board of Trustees authorizes the Executive Director to appoint special Medical Board members on a case by case basis to serve in the absence of one or more Board appointed Medical Board members or where a Board appointed Medical Board member may have a conflict of interest. Such special appointments to the Medical Board shall be limited but shall continue for the duration of the claim or claims upon which determinations have been made by such special appointed member.

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