

Chapter 42 Rules of Hearing Practice and Procedure before the Board of Trustees

100 Purpose

The purpose of this regulation is to govern all practice and procedure before the Board of Trustees (hereinafter referred to as “Board of Trustees”) of the Public Employees' Retirement System of Mississippi (hereinafter referred to as “PERS”) in all matters arising under all retirement plans or programs administered by the Board of Trustees, except where specifically otherwise provided by the statutes of such programs or retirement plans, for which a hearing is ~~required~~ requested in any contested case.

101 Construction of regulation

~~These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the Board. In special cases, w~~Where good cause appears, not contrary to statute, the Board may permit deviation from these rules insofar as it may find compliance therewith to be impracticable or unnecessary.

102 Exhaustion of remedies

1. No person may file an appeal with the ~~Board Public Employees' Retirement System~~ until there has been a final administrative decision by the PERS Executive Director or, in the case of disability appeals, a ~~final administrative~~ decision by the PERS Medical Board. After an Order has been issued by the Board, the ~~No~~ aggrieved party may file an appeal in the Circuit Court of the First Judicial District of Hinds County, Mississippi, ~~until a final written decision and order has been issued by the Board of Trustees.~~ Any such appeal must be filed with the Hinds County Circuit Clerk within thirty (30) days of the entry of the ~~final written~~ Order of the Board being appealed pursuant to ~~of Trustees or such longer period of time as may be allowed by the~~ Uniform Circuit and County Court Rules.
2. Failure to exhaust administrative remedies, as herein provided, shall constitute a bar to any action in the courts, to the extent consistent with the laws of this state.

103 Perfection of appeal to the Board of Trustees by timely filing

1. All appeals to the Board of Trustees shall be initiated by filing a written Notice of Appeal on a form prescribed by the Board. ~~Notice of Appeal forms shall be made available by the Executive Director of the Public Employees' Retirement System (hereinafter referred to as “Executive Director”) upon request.~~
2. A Notice of Appeal must be filed within sixty (60) days after the date a person receives written notice of the final administrative decision of the Executive Director or decision of the PERS Medical Board of an alleged grievable action. Such notice may be filed by mail or personally. Failure to file a completed Notice of Appeal within the time specified shall be a bar to the filing of such appeal.

104 Content of Notice of Appeal

1. The Notice of Appeal must contain:

- a. the names and mailing addresses of all **appealing** parties and, if known, the name(s) and mailing address(es) of their attorney(s) **or other authorized representative**, if any;
 - b. if applicable, the appealing party's ~~(a)~~ employing agency and Social Security number ~~or (b) employing agency and social security number~~ of the member on whose account a claim is being made;
 - c. a statement, in detail, of the facts upon which the appeal is taken, including the effective date of any alleged grievable action, and why such action is alleged to be in error;
 - d. a statement of the final action taken and/or administrative decision, including the effective date of such final action;
 - e. a statement of the relief requested and the legal grounds on which such relief is based.
2. ~~In order to~~ **To** be considered complete, the appealing party must answer all questions **and respond to all** requests for information contained in the Notice of Appeal.

105 Filing of Documents

All documents relating to any proceeding pending or to be instituted before the Board shall be filed with the Executive Director of the Public Employees' Retirement System at 429 Mississippi Street, Jackson, Mississippi 39201-1005.

106 Assignment of Hearing Officer, setting of hearing and appearance

1. The Board ~~of Trustees~~ may, by ~~an~~ **Order** entered in its minutes, appoint a committee of the Board ~~of Trustees~~ or such other qualified personnel as Hearing Officer. The Executive Director shall set a date and time for the hearing. Unless otherwise ordered, hearings shall be held in the ~~Board~~ **Hearing** Room of the PERS Building located at 429 Mississippi Street, Jackson, Mississippi.
2. A Notice of Hearing shall be sent via mail to the appealing party and legal representative, if applicable.
3. If an appealing party fails to appear at the hearing, the Hearing Officer may proceed with the hearing and prepare a proposed statement of facts and recommendation to the Board ~~of Trustees~~ based on the evidence presented at such hearing.
4. Any request for a change or delay of a scheduled hearing must be made to the Executive Director in writing. All requests for changes or delays made prior to the scheduled hearing date shall be subject to the discretion of the Executive Director.

107 Conduct of hearing

- ~~1. Such hearing is an appeal of a prior administrative decision and the appealing party shall be afforded applicable safeguards of procedural due process.~~
- ~~2.~~**1.** The Hearing Officer shall have the authority to administer oaths and affirmations.
- ~~3.~~**2.** Each party may be represented by an attorney **or other authorized representative**.
- ~~4.~~**3.** At any hearing, the parties shall be entitled to enter an appearance, personally or by an attorney **or other authorized representative**, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding. The Hearing Officer will rule as to the admissibility of evidence that has not been

- submitted prior to the ~~initial decision having been made by the Medical Board~~, which is the subject of the appeal.
- 5.4. The Hearing Officer may clear the hearing room of witnesses not under examination and may question a witness during any part of the direct or cross-examination of such witness.
 - 6.5. The Hearing Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.
 - 7.6. The appealing party may request that attendance at such hearing be limited to individuals essential to the efficient conduct of the hearing, including but not limited to the claimant, legal or other representatives, witnesses, employer representatives, Hearing Officers, court reporter, and such other PERS administrative and support staff as are necessary. The filing of an appeal shall constitute a waiver of confidentiality only to the extent necessary to process and review the claim.
 - 8.7. The Hearing Officer may also call upon any party or staff of PERS for further material or relevant evidence upon any issue. However, all parties at interest shall be given a reasonable opportunity to inspect such documents made a part of the record. Further, in the case of disability appeals, the Hearing Officer shall have the authority to defer a decision ~~in order~~ to request a medical evaluation or test or additional existing medical records not previously furnished by the claimant. ~~In the event that the Hearing Officer requests further medical documentation or evaluation and such additional medical evidence, if reviewed by the Medical Board and said review results in a determination of eligibility for disability benefits, then such claim shall be processed and the appeal considered withdrawn.~~ Failure to provide the additional existing medical records within ninety (90) days of notification of such request or refusal to submit to a medical evaluation or test will result in a recommendation being made by the Hearing Officer based on the available information. If, prior to the expiration of the ninety-day period, an extension of time is requested in writing, the Executive Director may extend the ninety-day period provided the applicant can demonstrate that failure to submit to the medical evaluation or test or to provide the additional information was due to circumstances beyond his or her control.
 - 9.8. At the conclusion of all testimony, the Hearing Officer will adjourn and conclude the hearing. Thereafter, the Hearing Officer will retire to deliberate, after which the Hearing Officer will submit its proposed statement of facts, conclusions of law and recommendation, where applicable, solely for consideration by the ~~PERS Board of Trustees~~. The Board ~~of Trustees~~ has the sole authority to issue a decision relative to all claims on appeal by rendering its ~~e~~Order.

108 Evidence

1. The hearing shall be informal and formal rules of evidence shall not apply. In conducting a hearing, the Hearing Officer shall not be bound by the formal rules of evidence, and no informality in any proceedings or in the manner of taking of testimony shall invalidate any order or decision of the Board ~~of Trustees~~.

2. All testimony to be considered by the Hearing Officer, ~~at the hearing~~, except matters noticed officially or entered by stipulation, shall be sworn testimony. Before giving testimony, ~~taking the witness stand~~, each person shall swear or affirm that the testimony about to be given ~~in the hearing~~ before the Hearing Officer shall be the truth, the whole truth and nothing but the truth.
3. The Hearing Officer shall have the authority to admit into the record any evidence which, in the judgment of the Hearing Officer, has a reasonable degree of probative value and trustworthiness. The Hearing Officer shall have the authority to exclude evidence which is inadmissible, irrelevant, immaterial, lacking in probative value, or unduly cumulative.
4. Documents received into evidence by the Hearing Officer shall be marked ~~by or under the direction of the Hearing Officer~~, and filed as a part of the record.
5. Summations of the evidence and the law may be heard in the discretion of the Hearing Officer.

109 Record of hearing

A ~~C~~court ~~R~~reporter will attend and record all hearings. Any party desiring a transcript shall make request of the court reporter in attendance and shall be responsible for the payment of the cost of preparation of the transcript. In the event the claimant appeals the decision of the Board ~~of Trustees~~ to the Circuit Court of Hinds County, a certified copy of the transcript must be provided to the Executive Director with cost to be borne by the appealing party.

110 ~~Opinion and o~~Order to be filed upon completion of hearing

After all evidence is heard or received and the hearing is completed and the Hearing Officer's deliberation is concluded, the Hearing Officer shall certify the record described in Miss. Code Ann. Section 25-11-120 (1972, as amended) to the Board ~~of Trustees~~. The record shall include the Hearing Officer's proposed statement of fact and recommendation. In no case, other than those specifically left open for additional medical documentation requested by the Hearing Officer, shall additional evidence received after the hearing be included as part of the record for review by the Board ~~of Trustees or other appeal~~. The Board ~~of Trustees~~ shall receive the record and make its determination based solely on matters contained therein. Such determination shall be final. A copy of the ~~o~~Order shall be sent by the Executive Director to each party or his or her attorney or other authorized representative.

111 Service of notices and ~~o~~Orders by the Board

All notices and orders required to be served by the Board ~~of Trustees~~, the Hearing Officer or the Executive Director may be served by mail and service thereof shall be complete when a true copy of such document, properly addressed and stamped, is deposited in the United States mail.

112 Continuances - rescheduling of hearings

1. Continuances requested by any party shall be granted within the discretion of the Hearing Officer or Executive Director only for good cause shown.
2. When a continuance is granted or a hearing is rescheduled or relocated for any reason, each party shall be responsible for notifying their witnesses of the date, time and location of the hearing.

113 Filing of pleadings and other documents.

1. When an appeal is timely filed, it shall be assigned a docket number.
2. All pleadings and other documents filed in the appeal shall be maintained at the office of the Executive Director.
3. ~~Copies, including certified copies, of pleadings and other documents filed in the appeal shall be made available to an appealing party~~ **A copy of the composite exhibit to be introduced on behalf of PERS will be made available to the appealing party prior to the hearing. PERS may charge a fee for providing such copy** in accordance with the **any applicable** fee schedule adopted by the Board of Trustees.
4. All documentation filed by any party to an appeal must specify the assigned docket number and should be directed to the Executive Director of the Public Employees' Retirement System.

~~114 Computation of time~~

~~In computing any period of time prescribed or allowed under these rules, the Board of Trustees shall be guided by the Mississippi Rules of Civil Procedure.~~

~~115~~ **114 Amendment, validity, and enforcement of rules**

1. The Board of Trustees may, from time to time, amend these rules or promulgate new rules.
2. If any one or more of these rules is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.
3. The Board of Trustees shall have the authority, duty and responsibility to abide by and enforce these rules.

~~116~~ **115 Fees**

The Board of Trustees may, by order entered in its minutes, assess and collect fees to offset costs related to the conduct of hearings, including, but not limited to, court reporter fees, medical testimony fees, copying costs, etc.

BEFORE THE BOARD OF TRUSTEES
OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

(APPEALING PARTY)

APPEALING PARTY

AND

NO. _____

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

RESPONDING PARTY

NOTICE OF APPEAL

1. Name, mailing address and telephone number of Appealing Party:

2. Name, mailing address and telephone number of Appealing Party's attorney or other authorized representative, if any:

3. Name of retirement plan or program under which claim is filed:

4. Appealing Party or Member's employing agency:

5. Appealing Party or Member's Social Security Number: _____

- 6. Appealing Party's statement in detail, of the facts upon which the appeal is taken. Be sure to include the effective date of the alleged grievable action. Attach supplemental pages if needed, but do not write on the reverse side of this form or any supplemental page:

- 7. Appealing Party's statement of the final administrative decision disposition by the PERS staff of the Executive Director or PERS Medical Board and why such decision disposition is in error, including, where applicable, the effective date of the final decision disposition. Attach supplemental page, if needed, but do not write on the reverse side of this form or any supplemental page:

- 8. Appealing Party's statement of relief requested. Attach supplemental page, if needed:

- 9. List of any documents, exhibits, or supplemental pages which Appealing Party has attached to and in support of this Notice of Appeal. Attach supplemental page, if needed:

 TURE OF APPEALING PARTY

DATE: _____

NOTE: To file an Appeal, the Appealing Party should ~~fill-out~~ complete and return this form to the Executive Director of the Public Employees' Retirement System, 429 Mississippi Street, Jackson, Mississippi 39201. The rules governing appeals are attached to this form.

If you are a person ~~with a disability~~ and who may need special services or accommodations in the appeals process, please contact the Public Employees' Retirement System at (601) 359-3589 or (800) 444-7377.

(History: Adopted September 20, 1993; amended December 15, 1997; amended October 1, 1998; amended December 1, 1999; amended July 1, 2002; amended January 19, 2004; amended and reformatted August 1, 2007; amended October 1, 2009.)

Public Employees' Retirement System

Board of Trustees

June 23, 2009

Regulatory Change

Regulation 42– Rules of Hearing Practice and Procedure before the Board of Trustees

The primary focus of the proposed change to Regulation 42 is to establish a ninety-day deadline for submitting additional medical evidence where such is requested by the Disability Appeals Committee. Currently, there is no specified deadline. In order to insure that cases are processed in a timely manner, Staff has recommended a ninety-day deadline for submitting the requested material with a provision to have such period extended in the event the applicant can demonstrate that failure to do so was due to circumstances beyond his or her control. Other minor changes involve updating language for consistency throughout the regulation, simplifying sentence structure, and eliminating wording that is self-evident.

The effective date of these changes will be October 1, 2009. **Staff requests the Board's initial approval of the proposed changes. Notice of such action will be filed with the Secretary of State's Office.**