Public Employees' Retirement System

Board of Trustees

February 23, 2010

Regulatory Change

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

Currently, the Notice of Appeal used by members who desire to appeal a decision of the Medical Board or Executive Director is a part of Regulation 42. From time to time the Notice of Appeal form requires modification for clarity or to request or to provide additional information. The proposed amendment to Regulation 42 recommends that the Appeal form be deleted from the Regulation itself and become a separate form, like others used throughout the Agency, that can be modified from time to time as needed without the formality required by the Administrative Procedures Act.

The effective date of these changes will be April 1, 2010. No comments regarding the proposed changes have been received. **Staff requests the Board's final approval of the proposed changes.**

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 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, except where specifically otherwise provided by the statutes of such programs or retirement plans, for which a hearing is requested in any contested case.

101 Construction of regulation

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 until there has been a final administrative decision by the PERS Executive Director or, in the case of disability appeals, a decision by the PERS Medical Board. 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.
2. After an Order has been issued by the Board, the aggrieved party may file an appeal in the Circuit Court of the First Judicial District of Hinds County, Mississippi. Any such appeal must be filed with the Hinds County Circuit Clerk within thirty (30) days of the entry of the Order of the Board being appealed pursuant to 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 by timely filing

1. All appeals to the Board shall be initiated by filing a written Notice of Appeal on a form prescribed by the Board.
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 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. 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~~4~~ 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~~5~~ Assignment of Hearing Officer, setting of hearing and appearance

1. The Board may, by Order entered in its minutes, appoint a committee of the Board 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 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 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~~6~~ Conduct of hearing

1. The Hearing Officer shall have the authority to administer oaths and affirmations.
2. Each party may be represented by an attorney or other authorized representative.
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 decision which is the subject of the appeal.

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.
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.
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.
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 to request a medical evaluation or test or additional existing medical records not previously furnished by the claimant. 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.
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 Board. The Board has the sole authority to issue a decision relative to all claims on appeal by rendering its Order.

1087 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.
2. All testimony to be considered by the Hearing Officer, except matters noticed officially or entered by stipulation, shall be sworn testimony. Before giving testimony, each person shall swear or affirm that the testimony about to be given 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 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~~8 Record of hearing

A court 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 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~~09 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. 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. The Board shall receive the record and make its determination based solely on matters contained therein. Such determination shall be final. A copy of the Order shall be sent by the Executive Director to each party or his or her attorney or other authorized representative.

~~111~~10 Service of notices and Orders by the Board

All notices and orders required to be served by the Board, 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~~11 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~~12 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. 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 any applicable fee schedule adopted by the Board.
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~~13 Amendment, validity, and enforcement of rules

1. The Board 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 shall have the authority, duty and responsibility to abide by and enforce these rules.

~~115~~14 Fees

The Board 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 of the Executive Director or PERS Medical Board and why such decision is in error, including, where applicable, the effective date of the final decision. 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:

SIGNATURE OF APPEALING PARTY

DATE:

NOTE: To file an Appeal, the Appealing Party should 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 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; amended effective April 1, 2010)

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