Public Employees' Retirement System

Board of Trustees

June 22, 2010

Regulatory Change

Regulation 45A Administration of Disability Benefits under PERS

The proposed amendments to Regulation 45A provide or clarify the following:

- Clarify the different vesting periods required to be eligible for regular (non-duty related) disability benefits;
- Provide for an extension of the 90 day period for providing additional medical information;
- Clarify how long a member must submit federal income tax information;
- Clarify a disability retiree's status for reemployment purposes after the member reaches age 60 or the end of the temporary allowance period;
- Clarify an eligible former disability recipient's ability to apply for service retirement benefits and his or her ability to select a new option upon service retirement;
- Clarify the applicant's responsibility to provide objective medical evidence upon which a determination of disability must be based; and
- Clarify the term "objective medical evidence."

The effective date of this amendment will be August 1, 2010. **Staff requests the Board's final approval of the proposed amendment. No comments were received during the comment period.**

Chapter 45A Administration of Disability Benefits under PERS

100 Purpose

The purpose of this regulation is to provide the rules to be applied in the administration of disability benefits for the Public Employees' Retirement System of Mississippi (PERS) and the Supplemental Legislative Retirement Plan (SLRP).

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 has the requisite membership service credit as noted below or an active 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).

Membership service required to apply for regular disability benefits:

a. If a member joined PERS before July 1, 2007, the member must have at least four (4) years of membership service credit; or

b. If a member joined PERS on or after July 1, 2007, the member must have at least eight (8) years of membership service credit.

2. Any inactive member who has the requisite membership service credit as noted below 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. § 25-11-113 (1) (b).

Membership service required to apply for regular disability benefits:

a. If a member joined PERS before July 1, 2007, the member must have at least four (4) years of membership service credit; or

b. If a member joined PERS on or after July 1, 2007, the member must have at least eight (8) years of membership service credit.

Any inactive member seeking to establish eligibility for regular disability benefits must have met the applicable vesting period for eligibility at the time he or she withdrew from covered employment provided the member has not withdrawn his or her accumulated contributions.

3. Any member who is or becomes eligible for service retirement benefits under § 25-11-111 while pursuing a disability retirement allowance under § 25-11-113 or § 25-11-114 may elect to receive a service retirement allowance pending a final determination of eligibility for a 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 or reapply 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) 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. 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.

103 Effect of Death on Disability Application

1. The beneficiary or beneficiaries of a 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 her claim by the PERS Medical Board 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.
2. The beneficiary or beneficiaries of a vested member who has filed a claim for disability benefits whose claim has been approved by the Medical Board but who dies after approval but prior to the effective date of disability retirement 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.

104 Effective date of benefits

1. The effective date of benefits shall be the first of the month following receipt of a completed application for a disability retirement allowance but in no event before termination from covered service. § 25-11-113 (1) (a).
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.

105 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; § 25-11-113(1)(a)
   - **b.** Whether the employer has offered the member other duties without material reduction in compensation; § 25-11-113 (1) (a)
   - **c.** Whether the employer has complied with the applicable provisions of the Americans with Disabilities Act in affording reasonable accommodations that would allow the employee to continue employment; § 25-11-113 (1) (a) and
   - **d.** In the case of an application for duty-related disability benefits, the employer shall certify whether, to the best of its knowledge, an accident or traumatic event occurred resulting in a physical injury § 25-11-114 (8)
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. 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. The Executive Director may extend the ninety-day period if the applicant can demonstrate that failure to submit to such examination or to provide the requested information or report(s) was due to circumstances beyond his or her control. § 25-11-113 (1) (e)

   To be considered eligible for disability benefits, the Medical Board must certify to the Board of Trustees i) that the member is 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. §25-11-113 (1) (a)
3. For purposes of Section 25-11-113, medical evidence shall be defined as "objective medical evidence" which means: reports of examinations or treatments; medical signs which are anatomical, physiological, or

psychological abnormalities that are observed and documented by medical professionals; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that are shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays and psychological tests. Non-medical information not documented by test results, such as an applicant's description of pain, is not considered objective medical evidence.

4. The applicant is responsible for providing sufficient objective medical documentation to the PERS Medical Board in support of his or her claim for disability. PERS does not have the burden of proving that an applicant is not disabled. The Medical Board shall certify to the Board of Trustees whether, based on the objective medical evidence, the member 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 § 25-11-113 (1) (a). As part of the determination process, the Medical Board shall consider certification from the employer as to whether 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.

5. In applying for 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 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 employee's 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. A 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. §25-11-114 (6)

6. No inactive member shall be eligible to apply for duty-related disability benefits regardless of years of service if withdrawal from service occurred before July 1, 1984, the date that such benefits were first authorized.
7. 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.
8. 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).
9. 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 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.

106 Continuing qualification for disability benefits

1. Disability retirees under the age of sixty (60) or until the termination age of the temporary allowance under § 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 sixty (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 sixty (60) or termination age of the temporary allowance shall not be required to submit to medical reexaminations. § 25-11-113 (3)

a. If after ninety (90) days from a request, 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. § 25-11-113 (3)

b. If following reexamination the Medical Board determines that a disability retiree is physically and mentally able to return to the 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. § 25-11-113 (6)

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 that together with the amount earnable by him shall equal his average compensation. § 25-11-113 (4)

d. Until the disability retiree reaches age sixty (60) or until the termination age for the temporary allowance under § 25-11-113(2)(c), as applicable, a disability retirees shall be required to submit annually a copy of his or her 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 retirant.

e. If based on a review of earnings during the year, the 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. § 25-11-113 (4)

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 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 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. § 25-11-113 (4)

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. § 25-11-113 (4)

2. Disability retirees who have attained the age of sixty (60) or the age at which the temporary allowance ends as provided under § 25-11-113(2)(c), as applicable, shall be considered to have retired under service retirement, and, for purposes of reemployment with a covered employer, shall be subject to the reemployment limitations as provided under Board Regulation 34, Reemployment After Retirement.

107 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 (3) 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 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.

4. If a disability retirement allowance is terminated because the retiree has returned to covered employment in the position from which he or she was retired or to other covered employment in which he or she is earning an amount equal to or more than his or her average compensation and the retired member terminates such covered employment due to his or her disability before contributing for a period of time that exceeds six (6) calendar months, PERS shall credit both the employee and employer contributions paid during such period to the employer who shall then refund to the employee the employee contribution. The original disability retirement allowance shall be

reinstated prospectively the first of the month following termination from covered employment.

5. If the disability is terminated due to the medical board's determination that a member is mentally and physically able to return to his or her former employment, the disability retiree may subsequently qualify for a service retirement allowance based on actual years of service credit plus credit for the period during which a disability allowance was paid as follows:
   a. If the disability retiree received benefits under the age limited plan, he or she will receive service credit for the period of time he or she received disability benefits up to age 60; and
   b. If the disability retiree received benefits under the tiered disability plan, he or she will receive service credit for the period of time he or she received disability benefits up to the end of the temporary allowance.
6. If the disability is terminated due to the medical board's determination that a member is mentally and physically able to return to his or her former employment, and the disability retiree is eligible for service retirement at the time of such termination or later becomes eligible for service retirement, the disability retiree may subsequently make application for a service retirement benefit and select a new option.

108 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.

(History: Adopted August 1, 1996; amended February 1, 2000; amended January 1, 2002; amended July 1, 2002; amended June 21, 2005 to be effective 8/1/2005; amended and reformatted July 1, 2007; amended effective July 1, 2009; amended effective August 1, 2010)

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.~~ the Public Employees' Retirement System of Mississippi (PERS) and the Supplemental Legislative Retirement Plan (SLRP).

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, 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,~~ has the requisite membership service credit as noted below or ~~a~~ an active 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).

Membership service required to apply for regular disability benefits:

a. If a member joined PERS before July 1, 2007, the member must have at least four (4) years of membership service credit; or

b. If a member joined PERS on or after July 1, 2007, the member must have at least eight (8) years of membership service credit.

2. Any inactive member who ~~became a member of the system before July 1, 2007, and who has four (4) 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~~ has the requisite membership service credit as noted below 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. § 25-11-113 (1) (b).

Membership service required to apply for regular disability benefits:

a. If a member joined PERS before July 1, 2007, the member must have at least four (4) years of membership service credit; or

b. If a member joined PERS on or after July 1, 2007, the member must have at least eight (8) years of membership service credit.

Any inactive member seeking to establish eligibility for regular disability benefits must have met the applicable vesting period for eligibility at the time he or she withdrew from covered employment provided the member has not withdrawn his or her accumulated contributions.

3. Any member who is or becomes eligible for service retirement benefits under § 25-11-111 while pursuing a disability retirement allowance under § 25-11-113 or § 25-11-114 may elect to receive a service retirement allowance pending a final determination of eligibility for a 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 or reapply 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) 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. 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.

103 Effect of Death on Disability Application

~~5.~~ 1. The beneficiary or beneficiaries of a 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 her claim by the PERS Medical Board 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.

~~6.~~ **2.** The beneficiary or beneficiaries of a vested member who has filed a claim for disability benefits whose claim has been approved by the Medical Board but who dies after approval but prior to ~~termination from covered service,~~ the effective date of disability retirement 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~~ 104 Effective date of benefits

1. The effective date of benefits shall be the first of the month following receipt of a~~n~~ completed application for a disability retirement allowance~~,~~ but in no event before termination ~~of state~~ from covered service. § 25-11-113 (1) (a).
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~~ 105 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; § 25-11-113(1)(a)
   - **b.** Whether the employer has offered the member other duties without material reduction in compensation; § 25-11-113 (1) (a)
   - **c.** Whether the employer has complied with the applicable provisions of the Americans with Disabilities Act in affording reasonable accommodations that would allow the employee to continue employment; § 25-11-113 (1) (a) and
   - **d.** In the case of an application for duty-related disability benefits, the employer shall certify whether, to the best of its knowledge, an accident or traumatic event occurred resulting in a physical injury ~~occurred~~. § 25-11-114 (8)
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. 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. The Executive Director may extend the ninety-day period if the applicant can demonstrate that failure to submit to such examination or to provide the requested information or report(s) was due to circumstances beyond his or her control. § 25-11-113 (1) (e)

   ~~In order t~~To be considered eligible for disability benefits, the Medical Board~~,~~ must certify to the Board of Trustees i) 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. §25-11-113 (1) (a)

3. For purposes of Section 25-11-113, medical evidence shall be defined as "objective medical evidence" which means: reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that are observed and documented by medical professionals; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that are shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays and psychological tests. Non-medical information not documented by test results, such as an applicant's description of pain, is not considered objective medical evidence.

~~3.~~4. The applicant is responsible for providing sufficient objective medical documentation to the PERS Medical Board in support of his or her claim for disability. PERS does not have the burden of proving that an applicant is not disabled. The Medical Board shall certify to the Board of Trustees whether, based on the objective medical evidence, 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 § 25-11-113 (1) (a). 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~~5. In applying for 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 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 employee's 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. A 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. §25-11-114 (6)

~~5~~6. No inactive member shall be eligible to apply for duty-related disability benefits regardless of years of service if withdrawal from service occurred ~~prior to~~ before ~~the~~ July 1, 1984, the date that such benefits were first authorized ~~in the PERS law~~.

~~6~~7. 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~~8. 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).

~~8~~9. 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~~ 106 Continuing qualification for disability benefits

1. Disability retirees under the age of sixty (60) or until the termination age of the temporary allowance under § 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 sixty (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 sixty (60) or termination age of the temporary allowance shall not be required to submit to medical reexaminations. § 25-11-113 (3)

a. ~~In the event~~ If after ninety (90) days from a request, 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. § 25-11-113 (3)

b. If~~,~~ following reexamination~~,~~ the Medical Board determines that a disability retiree is physically and mentally able to return to the 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. § 25-11-113 (6)

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 that together with the amount earnable by him shall equal his average compensation. § 25-11-113 (4)

d. Until the disability retiree reaches age sixty (60) or until the termination age for the temporary allowance under § 25-11-113(2)(c), as applicable, a ~~D~~disability retiree~~s~~ shall be required to submit annually a copy of ~~their~~ his or her 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 retirant.

e. If~~,~~ based on a review of earnings during the year, the 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. § 25-11-113 (4)

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. § 25-11-113 (4)

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. § 25-11-113 (4)

2. Disability retirees who have attained the age of sixty (60) or the age at which the temporary allowance ends as provided under § 25-11-113(2)(c), as applicable, shall be considered to have retired under service retirement, and, for purposes of reemployment with a covered employer, shall be subject to the reemployment limitations as provided under Board Regulation 34, Reemployment After Retirement.

~~106~~ 107 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 (3) 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.
4. If a disability retirement allowance is terminated because the retiree has returned to covered employment in the position from which he or she was retired or to other covered employment in which he or she is earning an amount equal to or more than his or her average compensation and the retired member terminates such covered employment due to his or her disability before contributing for a period of time that exceeds six (6) calendar months, PERS shall credit both the employee and employer contributions paid during such period to the employer who shall then refund to the employee the employee contribution. The original disability retirement allowance shall be reinstated prospectively the first of the month following termination from covered employment.
5. If the disability is terminated due to the medical board's determination that a member is mentally and physically able to return to his or her former employment, the disability retiree may subsequently qualify for a service retirement allowance based on actual years of service credit plus credit for the period during which a disability allowance was paid as follows:
   a. If the disability retiree received benefits under the age limited plan, he or she will receive service credit for the period of time he or she received disability benefits up to age 60; and
   b. If the disability retiree received benefits under the tiered disability plan, he or she will receive service credit for the period of time he or she received disability benefits up to the end of the temporary allowance.
6. If the disability is terminated due to the medical board's determination that a member is mentally and physically able to return to his or her former employment, and the disability retiree is eligible for service retirement at the time of such termination or later becomes eligible for service retirement, the disability retiree may subsequently make application for a service retirement benefit and select a new option.

~~107~~ 108 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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