

Title 27: Personnel

Part 210: PERS, Regulations for Retirement Plans Administered by the Board of Trustees

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. The schedule of fees will 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 a physical injury sustained from an accident or a traumatic event caused by external violence or physical force occurring in the performance of duty 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 non-duty-related disability benefits:

- a. If a member joined PERS before July 1, 2007, the member must have at least four 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 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 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 non-duty-related disability benefits:

- a. If a member joined PERS before July 1, 2007, the member must have at least four 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 years of membership service credit.

Any inactive member seeking to establish eligibility for non-duty-related disability benefits must have met the applicable 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 § 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, *Filing an Application for Monthly Benefits and Establishing an Effective Date of Retirement*, 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, the partial lump sum distribution option, as provided under Miss. Code Ann. § 25-11-115.
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 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. If a vested member who has filed a claim for disability benefits dies prior to the review and determination of his or her claim by the Medical Board, his or her beneficiary or beneficiaries 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 by the member prior to death and is on file with PERS.
2. If a vested member who has filed a claim for disability benefits dies after his or her claim has been approved by the Medical Board but before his or her effective date of disability retirement, his or her beneficiary or beneficiaries 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 by the member prior to death and is on file with PERS.
3. If a vested member who has filed a claim for disability benefits dies after his or her claim has been approved by the Medical Board and on or after the effective date of disability retirement but before benefits have begun, his or

her beneficiary or beneficiaries shall be entitled to benefits in accordance with the option selected by the member on the disability retirement application.

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 Section 104.1 of this Regulation, 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 with or without pay, such member is considered an employee of the agency, and thus not eligible to simultaneously receive disability retirement benefit payments.
3. A member must terminate from all positions in state service, whether covered or not, to be eligible for any benefit. If a determination is made that a member who is employed in one covered position is disabled from that position, he or she must terminate from all positions in state service, whether covered or not, to receive a disability retirement allowance.
4. If a member is reemployed by a covered employer in any capacity, including that of an independent contractor, within 90 days from his or her effective date of retirement, or is promised before retiring that he or she will be reemployed following the 90-day separation period, (i) the member shall be considered to have continued in the status of an employee and not to have separated from service, (ii) the retirement allowance will be canceled, and (iii) any retirement allowance payments received by the member shall be repaid to PERS. The member's wages and contributions will continue to be reported to PERS, provided that the member is employed in a covered position.

105 Medical determination of eligibility for disability benefits

1. The employer must provide the following information that 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, a physical injury was sustained from an accident or a traumatic event caused by

external violence or physical force that occurred in the performance of duty. § 25-11-114 (6)

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 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 90-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 § 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 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 PERS 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 10 percent 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 or her disability is a direct result of a physical injury sustained from an accident or a traumatic event caused by external violence or physical force occurring in the 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 physical injury sustained from an accident or a traumatic event caused by external violence or physical force 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 that 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, which was 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 compensation 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 Board Regulation 42, *Rules of Hearing Practice and Procedure before the Board of Trustees*, 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.
10. A disability determination will be made based on the member's inability to perform the job duties associated with a covered position and not a second position where only wages are covered pursuant to Miss. Code Ann. § 25-11-103 (k) (1972, as amended); however, the average compensation will be calculated taking into consideration all covered wages from all positions.

106 Continuing qualification for disability benefits

1. Medical reexaminations

- a. A disability retiree under the age of 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 years following retirement on a disability retirement allowance and once in every period of three years thereafter unless otherwise determined by the Medical Board. The Medical Board may specify both the frequency and the nature of such reexamination.
- b. Upon the attainment of age sixty 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. A disability retirees reaching age sixty or the termination age of the temporary allowance shall not be required to submit to medical reexaminations. § 25-11-113 (3)

- c. If after 90 days from a request a disability retiree refuses to provide a physician's statement of reexamination, his or her allowance shall be discontinued until his or her withdrawal of such refusal, and should his or her refusal continue for one year, all rights to a disability benefit shall be revoked by the Board of Trustees. § 25-11-113 (3)
- d. If following reexamination the Medical Board determines that a disability retiree is physically and mentally able to return to the employment from which he or she 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)
- e. 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 or her disability allowance, exclusive of cost-of-living adjustment, and his or her 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 or her shall equal his or her average compensation. § 25-11-113 (4)

2. Earnings limitations while receiving disability benefits

- a. Until the disability retiree reaches age 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 retiree.
- b. 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 that, 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)
- c. If documented earnings meet or exceed the average compensation for a period in excess of six 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 or her 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)

- d. 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)
- e. Disability retirees who have attained the age of 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 months unless the retiree has returned to covered employment in the position from which he or she was retired on disability or to other covered service in which he or her is earning an amount equal to or more than his or her average compensation or where such termination is a result of the retiree'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 Board 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 retiree terminates such covered employment due to his or her disability before contributing for a period of time that exceeds six 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 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.

109 Duty-related disability benefits excluded from income

Internal Revenue Code Section 104 and applicable Department of the Treasury Regulations provide that, if disability payments (i) are mandated by statute and (ii) are compensation for occupational injury, such payments are excluded from income, provided that the payments are not based upon the employee's age or length of service. Accordingly, the minimum duty-related disability benefits paid pursuant to § 25-11-114 (6) are excluded from income under Code Section 104.

(History: Adopted effective August 1, 1996; amended effective February 1, 2000; amended effective January 1, 2002; amended effective July 1, 2002; amended June 21, 2005 to be effective 8/1/2005; amended and reformatted effective July 1, 2007; amended effective July 1, 2009; amended effective August 1, 2010; amended effective August 1, 2012)