

Chapter 45B Administration of Disability Benefits for Municipal Systems

100 Purpose

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

101 Fees for determining disability benefits

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. Article 1 - General Municipal Employees (Biloxi and Meridian)

- a. An active General Municipal System member may file an application for disability benefits provided a) such member has at least five (5) years of membership service, or b) such member is permanently and totally disabled from any gainful occupation and such disability occurred as the natural and proximate result of the actual performance of duty, without willful negligence. (Miss. Code Ann. § 21-29-35 and 21-29-39 (1972, as amended))
- b. Any 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 by the PERS Medical Board shall be eligible for death benefits, including spouse/survivor benefits or a refund of contributions.
- c. Any member who has filed a claim for disability benefits who has been approved by the Medical Board to receive such benefits but who dies after approval but prior to termination from covered service shall have benefits paid to the surviving spouse and/or dependent children as if he or she had died after disability retirement.

2. Articles 3 and 5

- a. An active Firemen's and Policemen's Disability and Relief Fund member may file an application for disability benefits provided a) such member has at least five (5) years of membership service, or b) such member is totally disabled from duties by reason of sickness or injury caused or sustained by reason of service or discharge of duties. (Miss. Code Ann. §§ 21-29-133, 21-29-135, and 21-29-241 (1972, as amended))
- b. Any 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 by the PERS Medical Board shall be eligible for death benefits, including spouse/survivor benefits or a refund of contributions.
- c. Any member who has filed a claim for disability benefits who has been approved by the Medical Board to receive such benefits but who dies after approval but prior to termination from covered service shall have benefits

paid to the surviving spouse and/or dependent children as if he or she had died after disability retirement.

103 Effective date of benefits

1. The effective date of benefits shall be the first of the month following receipt of an application for a disability retirement allowance, but in no event before termination of state service. (Miss. Code Ann. §§25-11-113 (1) (a) and 21-29-35 (1972, as amended))
2. For purposes of determining the effective date of benefits as referenced in number one (1) above, termination from covered service shall mean the cessation of the employee-employer relationship as characterized by resignation or termination from employment, with or without cause. While a member may not be performing the duties of the job, if the member has not resigned or been terminated by the employer, the member is still considered employed and thus, ineligible for initiation of disability retirement benefit payments. In cases where the member is on authorized leave without pay or administrative leave or is receiving Workers' Compensation benefits, such member is considered an employee of the agency, and thus, not eligible to receive disability retirement benefit payments.

104 Medical determination of eligibility for disability benefits

1. The employer must provide the following information, which will be considered by the Medical Board in its determination for eligibility:
 - a. The job description and duties of the member; (Miss. Code Ann. § 25-11-113 (1) a) (1972, as amended))
 - b. Whether the employer has offered the member other duties without material reduction in compensation; (Miss. Code Ann. § 25-11-113 (1) (a) (1972, as amended))
 - c. Whether the employer has complied with the applicable provisions of the Americans With Disabilities Act in affording reasonable accommodations which would allow the employee to continue employment. (Miss. Code Ann. § 25-11-113 (1) (a) (1972, as amended))
 - d. In the case of an application for hurt on the job benefits, the employer shall certify whether, to the best of its knowledge, the sickness or injury was caused or sustained by reason of service or discharge of duties. (Miss. Code Ann. §§ 21-29-35, 21-29-133, 21-29-241 (1972, as amended))
2. The member shall submit medical evidence of the disability to the Medical Board for review. The Medical Board may require an independent medical evaluation or such other examination or report as is necessary to determine the member's eligibility for benefits. Refusal to submit to such examination or to otherwise provide the requested additional information within ninety

(90) days of such request, shall result in the member's application being considered void. (Miss. Code Ann. § 25-11-113 (1) (d) (1972, as amended))

- a. In order to be considered eligible for disability benefits the Medical Board must certify to the Board of Trustees that the Firemen's and Policemen's Disability and Relief Fund 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.
 - b. 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 Municipal System disability benefits are claimed, and (iii) the facts of the case, will be taken into consideration as a part of the Medical Board's independent evaluation and determination (Miss. Code Ann. § 25-11-113 (1) (a) (1972, as amended))
 3. The Medical Board shall certify to the Board of Trustees whether the member, based on the medical evidence, is mentally or physically incapacitated for further performance of duty and that such incapacity is likely to be permanent and whether, based on all other facts, the member should be retired on a disability allowance. In making this determination, the Medical Board shall use the following definition:
 - a. Disability, for members of the General Municipal Retirement System, governed by MCA Chapter 29, Article 1, shall be defined as a total and permanent incapacity from duty as well as from any gainful occupation for compensation or profit. (Miss. Code Ann. § 21-29-35 and 21-29-39 (1972, as amended))
 - b. Disability, for members of the Firemen's and Policemen's Disability and Relief Fund, governed by MCA, Chapter 29, Articles 3 and 5, shall be defined as a total inability to discharge duties as a fireman or policeman. Such disability may be due to physical or mental incapacity/illness.
 - c. **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.**

4. In applying for job related disability benefits, a member must provide medical proof satisfactory to the Medical Board that his disability is a.) the natural and proximate result of the actual performance of duty without willful negligence, if a member under Article 1, the General Municipal System, or b.) a sickness or injury caused or sustained by reason of service or discharge of his duty, if a member under Article 3 or 5, the Firemen's and Policemen's Disability and Relief Fund. (Miss. Code Ann. §§ 21-29-35, 21-29-133, and 21-29-241 (1972, as amended))
5. A disability benefit applicant must provide a statement certifying all gainful employment or other such income statements as may be requested by PERS.
6. 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. (Miss. Code Ann. § 25-11-120 (1972, as amended) and Regulation 42)
 - a. Appeals of decisions made under Regulation 42 by the PERS Board of Trustees may be made by members of the Firemen's and Policemen's Disability and Relief Fund to the Board of Disability and Relief Appeals as provided in Miss. Code Ann. § 21-29-113 and 21-29-215 (1972, as amended).
7. 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.
8. Retirement on and receipt of service retirement benefits results in the member's forfeiture of any rights to pursue disability benefits.

105 Continuing Qualification for Disability Benefits

1. Disability retirees with less than 20 years of service 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 20 years of service

credit, calculated by adding service credit at retirement plus credit for the service during which a disability benefit is paid, the disability retiree shall be considered to have retired under a service retirement benefit with no further requirement for reexaminations and with no recalculation of benefits. (Miss. Code Ann. §§ 21-29-43, 21-29-137, 21-29-243 (1972, as amended) and PERS Regulation 39)

- a. In the event a General Municipal System disability retiree refuses to provide a physician's statement of reexamination, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all rights to a disability benefit shall be revoked by the Board of Trustees. (Miss. Code Ann. § 21-29-43 (1972, as amended) In the event a Firemen's and Policemen's Disability and Relief Fund disability retiree refuses to provide a statement of reexamination, his allowance shall be discontinued until his withdrawal of such refusal. (Miss. Code Ann. § 21-29-137 and 21-29-243 (1972, as amended))
 - 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. (Miss. Code Ann. § 21-29-43 (2)(1972, as amended))
 - c. Disability retirees shall be required to submit annually a copy of their federal income tax return, including supporting documentation, or other earnings statements acceptable to the Board of Trustees, no later than 30 days following the due date of such return.
 - d. Any General Municipal disability retiree, who has not completed twenty (20) years of service prior to retirement, who secures gainful employment over a period of three (3) consecutive months shall have his disability benefit revoked by the Board. (Miss. Code Ann. § 21-29-43 (3) (1972, as amended))
 - e. If income information is not submitted as required by the Board of Trustees, benefits shall be suspended until such time as the retiree submits proper documentation as required above. (Miss. Code Ann. § 25-11-113 (4) (1972, as amended))
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.

1. In the event a retiree is determined to no longer qualify for disability benefits, such retiree will be provided with notice of such determination and benefits will continue for a period of three (3) months prior to termination, unless the retiree has returned to covered employment in the position from which he was retired, or under Article 1, such retiree has returned to any gainful employment over a period of three (3) consecutive months in which case benefits shall be terminated immediately.
2. 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.
3. Appeals of decisions made under Regulation 42 by the PERS Board of Trustees may be made by members of the Firemen's and Policemen's Disability and Relief Fund to the Board of Disability and Relief Appeals as provided in Miss. Code Ann. § 21-29-113 and 21-29-215 (1972, as amended).

107 PERS Medical Board

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

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