

3307:1-7-05

Disability benefits-denials and terminations.

The following procedures are hereby established for the appeal of any denial or termination of disability benefits by the board following an independent medical examination by the state teachers retirement system.

(A) At least seven days before a recommendation is presented to the retirement board, written notification shall be issued to the applicant or recipient. This notice shall include the recommendation to be presented to the board.

(1) No additional medical evidence shall be considered once written notification has been issued to an applicant or recipient pursuant to paragraph (A) of this rule.

(2) Should the retirement system receive additional medical evidence after written notification has been issued to an applicant or recipient pursuant to paragraph (A) of this rule, the evidence shall be held and included as part of the appeal documentation if a right to appeal is exercised as set forth in paragraph (B)(2) of this rule. Should a right to an appeal not be exercised as set forth in paragraph (B)(2) of this rule, the evidence will be returned to the person who submitted the information.

(B) Following board action terminating or denying disability benefits:

(1) The applicant or recipient will be informed in writing of the action taken by the board. Notification shall include:

(a) A statement that medical evaluation and board action was conducted in accordance with section 3307.48 or 3307.62 of the Revised Code.

(b) Confirmation that the applicant or recipient has the right to appeal the board action.

(c) A statement explaining that written notice of appeal must be filed with the retirement system no later than fifteen calendar days from receipt of notification of denial or termination.

(d) An explanation of future rights and limitations upon the rights to again apply for disability benefits if an appeal is not pursued.

(2) Procedure for exercising right to appeal:

(a) Written notice of appeal, accompanied by a statement from the applicant

or recipient, his or her counsel and/or attending physician that an appeal will be based on evidence contrary to the findings of the independent medical examiners, must be filed with the retirement system within fifteen calendar days of receipt of notification of board action.

- (b) If an applicant or recipient does not appeal the action of the retirement board, a person acting on the member's behalf or the member's employer may exercise the right to appeal in the same manner and subject to the same procedures and requirements as specified for an applicant or recipient.
- (3) Following the retirement system's timely receipt of written notice of appeal from an applicant or recipient, the retirement system shall provide the applicant or recipient with the following information confirming the appeal:
- (a) Confirmation that the applicant or recipient, counsel for the applicant or the recipient, and/or person acting on the member's behalf, member's employer, or attending physician may present additional medical evidence orally at an appeal hearing that will be scheduled by the retirement system or that additional medical evidence may be presented in writing. Such additional medical evidence shall not have been previously considered by the independent medical examiner or the medical review board. Additional medical evidence presented in writing must be received by the retirement system on or before the deadline date provided by the retirement system and may not be submitted at the appeal hearing. The deadline date for submitting additional medical evidence in writing shall be at least twelve business days before the date of the scheduled appeal hearing.
 - (i) "Additional medical evidence" means current physician examinations, hospital discharge summaries and diagnostic testing completed up to twelve months preceding the written notice of appeal that has not been previously submitted to the retirement system. Additional medical evidence outside the twelve months preceding the written notice of appeal may be submitted only if the retirement system has determined in its sole discretion that such additional medical evidence pertains to the diagnosis of the applicant's or recipient's claimed disabling condition. In addition:
 - (a) For an appeal following a denial of disability benefits, additional medical evidence must be related to the conditions presented and supported as part of the initial application.

(b) For an appeal following a termination of disability benefits, additional medical evidence must be related to the recipient's current medical status.

(ii) The chair of the medical review board may request additional medical evidence from the applicant or recipient.

(b) Notice that the applicant or recipient may appear at the appeal hearing in person, be represented by counsel and/or an attending physician, or may choose to not appear in person but have the case reviewed by the retirement board or its designee(s).

(c) Notice that if a personal appearance at the appeal hearing is requested by the deadline date provided by the retirement system, the applicant or recipient shall inform the board of the name, title, and position of each person appearing on his/her behalf.

If a personal appearance is requested and scheduled, the member shall appear at the appeal hearing on the date and at the time specified by the retirement system. If the member fails to appear on the specified date and time for any reason, all rights to a personal appearance at an appeal shall terminate and the appeal shall be decided on the basis of written evidence previously submitted.

(d) Notice that the applicant or recipient may request up to two delays of the deadline date provided by the retirement system, as set forth in paragraph (B)(4) of this rule.

(e) An explanation of the procedures and limitations applicable to the appeal hearing, as set forth in paragraph (B) of this rule.

(f) A statement explaining that any costs incurred by the applicant or recipient in the appeal will not be reimbursed by the retirement system.

(4) An applicant or recipient may request in writing up to two delays of the deadline date provided by the retirement system as outlined below, provided that the request for a delay is received on or before the deadline date provided by the retirement system.

(a) One forty-five calendar day delay may be requested for any reason. A new deadline date will be provided by the retirement system to the applicant or recipient that is forty-five calendar days from the original deadline

date provided by the retirement system.

- (b) One additional forty-five calendar day delay may be requested if the request is provided to the retirement system in writing by the deadline date set in paragraph (B)(4)(a) of this rule, good cause for the request for an additional delay is provided, and the retirement system approves the request for an additional delay. Approval of the request for an additional delay for good cause shall be determined solely by the retirement system. If the retirement system approves the request for an additional delay, a new deadline date will be provided to the applicant or recipient that is forty-five calendar days from the deadline date set in paragraph (B)(4)(a) of this rule.

(5) Scope and procedure upon appeal:

- (a) An appeal hearing will be scheduled and conducted by the retirement board or its designee(s).
- (b) The chairman of the retirement board or the designee(s) shall be responsible for conducting the appeal hearing and the executive director, deputy executive director -- member benefits, or the designee(s) and chair or designated member of the medical review board shall be in attendance to act as advisor, if required.
- (c) The purpose of the appeal hearing shall be for the applicant or recipient to present information to the retirement board or its designees(s) based on additional medical evidence not previously considered by the independent medical examiner or the medical review board. Additional medical evidence or any other written information to be presented at the hearing must be provided to the system by the deadline in paragraph (B)(3)(a) of this rule and should substantiate the applicant's or recipient's claim that the eligibility requirements of section 3307.48 or 3307.62 of the Revised Code have been met and that the applicant or recipient is medically incapacitated from the performance of duty by a previously reported mental or physical condition that is permanent or presumed to be permanent.
- (d) Additional medical evidence or other written information may not be submitted at the hearing.
- (e) Upon consideration of the record on appeal and the information, positions, contentions and arguments of the applicant or recipient, the retirement board or its designee may request additional medical evidence or direct

further examination or testing by independent medical examiners and may return a record for review and recommendation by the medical review board.

- (f) When the retirement board is satisfied that the record before it is complete and has completed its deliberations, it may affirm, disaffirm or modify its prior action by a majority vote. Written notice of such action shall be given to the applicant or recipient.
 - (g) A stenographic record of the appeal hearing will be made only upon request of the applicant or recipient and any and all costs shall be at the applicant's or recipient's expense. Such request must be made at least twelve business days in advance of the scheduled appeal hearing. ~~An audio recording will be made if a stenographic record is not requested and all costs of the audio recording will be at the system's expense.~~
 - (h) The state teachers retirement system's administrative staff shall have authority to act for the board in matters relevant to, but not in lieu of, the actual appeal proceeding.
 - (i) All communications or notifications during the appeal process shall be sent to the applicant or recipient by certified or priority mail, with copies by regular mail to counsel if the applicant or recipient has notified the retirement system of representation by counsel and signed an appropriate authorization for release of information.
- (C) Any subsequent applications for disability benefits filed after a denial or termination of benefits shall be submitted with additional medical evidence not previously submitted in connection with prior applications for disability benefits, supporting progression of the former disabling condition or evidence of a new disabling condition. If such evidence is evaluated by the medical review board and found to be inadequate to establish the progression of the disabling condition or the existence of a new disabling condition, the application shall be voided and a notice will be sent to the applicant. If two years have elapsed since the date the member's contributing service terminated, no subsequent application shall be accepted except if the member did not earn service credit before July 1, 2013, the application must be made within a one-year period from the date contributing service terminated.

Effective:

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Certification

Date

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