

3309-1-40

Application and procedures for receiving disability benefits.

(A) For purposes of sections 3309.39, 3309.40, 3309.401 and 3309.41 of the Revised Code and SERS rules:

- (1) "Disability" means disabling condition, either permanent or presumed to be permanent for twelve continuous months following the filing of an application, which has occurred or increased since the applicant last became a member and which renders the member mentally or physically incapacitated for the performance of the member's last assigned primary duty as an employee.
- (2) "Ongoing disability" means a disability for which medical treatment presently offers no reasonable expectation of improvement to the extent that a member may be found mentally and physically capable of resuming employment that is the same or similar to that from which the member was found disabled.
- (3) "Medical treatment" means treatment of common medical acceptance that is readily available, would be covered under the system's health care plan and may include but is not limited to, medicine, physical therapy, psychological or psychiatric services or mechanical devices, but would exclude surgery or other invasive procedures.
- (4) "Board physician" means the chairman of the medical advisory committee.
- (5) "Examining physician(s)" means the disinterested physician(s) assigned by the system or the chairman of the medical advisory committee to conduct medical examinations of a disability applicant or recipient to determine eligibility to obtain or continue to receive disability benefits.

(B) The school employees retirement board shall appoint a minimum of three members to the medical advisory committee who shall be physicians who demonstrate a wide range of competent medical experience, and a chairman for the medical advisory committee who shall act as medical advisor to the board. The chairman shall have authority and responsibility to assign competent and disinterested physicians to conduct medical examinations of disability applicants and recipients for the purpose of determining the member's eligibility to obtain and continue to receive disability benefits, to recommend and review medical treatment, to certify a disability as ongoing and to submit to the board a recommendation to accompany the report of the medical examiner and/or the medical advisory committee.

(C) ~~The retirement committee of the school employees retirement board shall be comprised of all elected and appointed members of the board, and~~ The Board shall be responsible for screening disability benefit actions; serving as a hearing

committee for disability applicants; ~~and making recommendations to the retirement board based upon the available evidence and recommendations. The board shall and determining~~ determine eligibility to obtain or continue to receive disability benefits.

- (D) In order to qualify for a disability benefit, a member shall submit an application on a form provided by the board and undergo a medical examination by the examining physician(s) as required.
- (E) The examining physician(s) shall make a report of the examination on a form provided by the board that sets forth the examining physician(s)' medical opinion as to the nature of any disabilities disclosed; and
- (1) Any recommended medical treatment, and the period of time in which recovery may reasonably be expected with such treatment, or
 - (2) That the disability is ongoing.
- (F) Upon receipt of a completed application, report of the examining physician(s), and any other available evidence pertaining to the application for disability, the board's medical advisory committee and/or the chairman of the medical advisory committee shall review all such information and prepare a recommendation to the board. ~~board's retirement committee~~. The recommendation shall include a description of any disability, the nature and duration of any recommended medical treatment, where applicable, or a certification from the board's physician that the disability is ongoing, and any recommended reexamination requirements. ~~The retirement committee shall review the available evidence and recommendations and shall make a recommendation to the board.~~
- (G) The ~~retirement~~ board shall determine whether the applicant is eligible for disability benefits. Notice of denial or termination of disability benefits shall be sent to the applicant by regular U.S. mail or certified mail pursuant to rule 3309-1-41 of the Administrative Code. Notice of eligibility for disability benefits shall be sent by regular U.S. mail or certified mail.
- (H) If the board's physician recommends medical treatment, the grant of disability benefits shall be conditioned on the applicant completing and returning a signed agreement to obtain recommended medical treatment on a form included with the notice of the conditional grant of disability benefits. Failure to return this agreement, properly completed, within sixty days of the date mailed by the system constitutes failure to meet conditions for granting the disability benefits and will result in an automatic denial of disability benefits without further action by the board, with all rights of appeal pursuant to rule 3309-1-41 of the Administrative

Code. Notice of the denial will be sent to the applicant pursuant to rule 3309-1-41 of the Administrative Code.

- (1) A copy of the notice of a conditional grant of disability benefits shall be sent to the attending physician designated on the member's application for disability benefits as authorized to receive the applicant's disability information unless the applicant subsequently provides a signed release designating another attending physician. The applicant's attending physician shall also receive:
 - (a) A description of the disabling condition,
 - (b) The nature and duration of any recommended medical treatment.
 - (2) The applicant's notice of the conditional grant of disability benefits shall inform the applicant that information regarding the nature of the disability and recommended treatment has been forwarded to the applicant's attending physician and that the applicant must contact that physician to review this information. The applicant shall be informed that the agreement to obtain recommended medical treatment must be properly completed and returned to the system within sixty days of the date that the system mailed the notice. Proper completion requires the signature of the attending physician indicating that the physician has communicated the disability information and recommended medical treatment to the applicant and the signature of the applicant indicating agreement to obtain the recommended medical treatment.
 - (3) Upon the timely return of a properly completed agreement to obtain recommended medical treatment, the system shall forward to the applicant an acknowledgment of receipt of the agreement containing the effective date of the disability benefits and annual reexamination and reporting requirements necessary to continue receiving disability benefits.
- (I) Based on a certification of ongoing disability by the board physician, the board may waive one or more of the annual examinations required by division (B) of section 3309.41 of the Revised Code and the filing of one or more annual earnings statements or current medical information required by division (D) of section 3309.41 of the Revised Code. The board may review any disability granted including those certified as ongoing and request other information pursuant to division (D) of section 3309.41 of the Revised Code and/or require the member to submit to a medical examination by the examining physician(s).
- (J) In the absence of a waiver from the board based on a certified ongoing disability, in order to continue receiving disability benefits, the recipient shall comply with the following conditions as set forth in section 3309.41 of the Revised Code:

- (1) Submit to an annual medical examination,
 - (2) If applicable, obtain any recommended medical treatment and submit medical reports regarding the treatment,
 - (3) Annually file an earnings statement, current medical information, and any other information required by the board.
- (K) If a recipient refuses to submit to a required medical examination or to file required information, the disability benefits shall be suspended until the examination is obtained or the information is filed. If, when applicable, the recipient fails to obtain recommended medical treatment and submit medical reports regarding the treatment, the disability benefits shall be suspended until the treatment is obtained and the report of the treatment submitted, or the board physician certifies that the treatment is no longer helpful or advisable.
- (1) Medical treatment is no longer helpful or advisable if, after a period of time in which it would be medically reasonable to see results, the treatment has failed to produce improvement in the disability, or continuation of the treatment presents a medically significant risk of aggravation or complication of an existing disability or creation of an additional disability.
- (L) If the recipient's failure to comply with any of the applicable conditions set forth in paragraph (J) of this rule continues for one year from the date of the suspension of benefits for noncompliance, the recipient's right to the disability benefits shall be terminated as of the date of the original suspension.
- (M) The examining physician(s) shall make a report of any required reexamination on a form provided by the board. The board physician shall review the report and certify to the board whether the recipient is no longer incapable of resuming the service from which the recipient was disabled.
- (1) If the board physician certifies that the member continues to be incapable of such service, the board's physician(s) shall make recommendations regarding reexamination and, where applicable:
 - (a) Recommend a continuation of the medical treatment previously recommended,
 - (b) Recommend a modification in medical treatment, or

- (c) Certify that the disability is ongoing.
- (2) If the board physician certifies that the recipient is no longer incapable of resuming the service from which the recipient was disabled and the board concurs, the board shall:
- (a) Terminate the disability benefits not later than three months after the board's concurrence, or upon notice of employment of the recipient as an employee.
 - (b) Certify to the recipient's last employer as applicable that the recipient is no longer incapable of resuming service that is the same or similar to that from which the recipient was found disabled, if the leave of absence has not expired.

Effective: 01/30/2006

R.C. 119.032 review dates: 02/01/2008

CERTIFIED ELECTRONICALLY

Certification

01/20/2006

Date

Promulgated Under: 111.15
Statutory Authority: 3309.04
Rule Amplifies: 3309.39, 3309.41
Prior Effective Dates: 1/21/77, 2/19/82, 10/26/84, 2/1/92, 1/2/93, 11/9/98,
5/9/03, 1/2/04, 1/6/05