

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" or "disabled" means that the member meets the following applicable standard of disability:

(a) At the time of application: A 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.

(b) At the time of annual examination:

(i) For a disability benefit recipient with a benefit effective date before January 7, 2013 and for a disability benefit recipient with a benefit effective date on or after January 7, 2013 who is on leave of absence, a disabling condition that renders the member mentally or physically incapable of resuming the service from which the member was found disabled.

(ii) For a disability benefit recipient with a benefit effective date on or after January 7, 2013 who is not on leave of absence, a disabling condition that renders the member mentally or physically incapable of performing the duties of any occupation.

(2) "Ongoing disability" means:

(a) For a disability benefit recipient with a benefit effective date before January 7, 2013, 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.

(b) For a disability benefit recipient with a benefit effective date on or after January 7, 2013, 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 employment in any occupation.

- (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~~chairperson of the medical advisory committee.
- (5) "Examining physician(s)" means the disinterested physician(s) assigned by the system or the ~~chairman~~chairperson 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.
- (6) "Any occupation" means a position that meets all of the following criteria:
 - (a) Replaces not less than seventy-five per cent of the member's final average salary, adjusted each year by the actual average increase in the consumer price index prepared by the United States bureau of labor statistics (U.S. city average for urban wage earners and clerical workers: "All items 1982-84=100");
 - (b) Is reasonably to be found in the member's regional job market;
 - (c) Is one that the member is qualified for by experience or education.
- (7) "Vocational rehabilitation" means tests, evaluations, and/or training whose purpose is to enable a disability benefit recipient to find employment in any occupation.
- (8) "Annual disability benefit" means the annuity and pension, or allowance, calculated under section 3309.40 or 3309.401 of the Revised Code at the time the member is determined to qualify for a disability benefit.
- (9) "Employee" includes service as a school board member or governing board member as defined in section 3309.012 of the Revised Code.
- (10) "Disability benefit recipient" means a member whose application for disability has been approved by the school employees retirement board.

(B)

- (1) 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~~chairperson for the medical advisory committee who shall act as medical advisor to the board. The ~~chairman~~chairperson 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 and/or vocational rehabilitation, 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.

- (2) The board may appoint as consultants, professionals in the field of vocational rehabilitation to provide services to the board on matters of vocational rehabilitation, including to conduct evaluations and to advise and make recommendations to the medical advisory committee, the board physician, and the board.
- (C) The board shall be responsible for screening disability benefit applications; serving as a hearing committee for disability applicants; and determining eligibility to obtain or continue to receive disability benefits.
- (D)
- (1) In order to qualify for a disability benefit, a member shall submit an application and undergo a medical examination by the examining physician(s) as required. ~~The~~
- (a) ~~The~~ application shall include report(s) from the member's health care provider(s) that identify the medical bases of the application and include supportive medical evidence, a job duty form, and a job description provided by the last employer. ~~Medical examinations will only be assigned for conditions identified by a health care provider.~~
- (b) Medical examinations will only be assigned for conditions identified by a health care provider.
- (c) A medical examination will not be required if the board physician determines that the medical records submitted with the application clearly establish that the member is disabled.
- (2) For purposes of division (C) of section 3309.39 of the Revised Code:

- (a) A disability occurs before termination of contributing service if the underlying medical condition existed while the member was contributing to SERS;
 - (b) A disability occurs after last becoming a member if the underlying condition did not exist or did not render the member incapacitated from working for at least twelve continuous months when the member last became a member of SERS.
- (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~~
- (1) Upon receipt of a completed application, report of the examining physician(s) as required, and any other available evidence pertaining to the application for disability, the board's medical advisory committee and/or the ~~chairman~~ chairperson of the medical advisory committee shall review all such information and prepare a recommendation to the board. The recommendation shall include a description of any disability, the nature and duration of any recommended medical treatment and/or vocational rehabilitation, where applicable, or a certification from the board's physician that the disability is ongoing, and any recommended reexamination requirements.
 - (2) If the applicant dies before the chairperson finalizes a recommendation, the application shall be automatically vacated. If the applicant dies after the chairperson has finalized a recommendation of disability, disability benefits from the effective date of disability through the month of the applicant's death shall be paid to the applicant's beneficiary.
- (G) The 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 and if the board's physician or consultant recommends vocational rehabilitation, the grant of disability benefits,

or continuation of disability, 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 or continuation of disability benefits shall be sent to the health care provider 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 health care provider. The applicant's health care provider 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 or continuation 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 health care provider and that the applicant must contact that health care provider to review this information. The applicant shall be informed that the agreement to obtain recommended medical treatment and/or vocational rehabilitation 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 health care provider indicating that the provider 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 and/or vocational rehabilitation.
- (3) Upon the timely return of a properly completed agreement to obtain recommended medical treatment and/or rehabilitation, 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)

(1) ~~Based on a certification of ongoing disability by the board physician, the board may waive annual Annual examinations required by division (B) of section 3309.41 of the Revised Code, shall be waived as follows: the filing of annual earnings statements and current medical information required by division (D) of section 3309.41 of the Revised Code, and the filing any other information required in this rule.~~

(a) When the board has waived the requirement indefinitely based on a certification of ongoing disability.

(b) For the present year based on the board physician's determination that the current medical information clearly establishes that the disability recipient continues to be disabled.

(c) If the termination standard is whether the recipient can perform any occupation, when:

(i) An annual earnings statement establishes that the recipient earned 75% or more of their adjusted FAS, and,

(ii) The board physician determines that current medical records do not indicate a subsequent material decline in the recipient's physical and mental condition.

~~If not previously waived, the obligation to file annual earnings statements of a disability recipient whose disability has been certified as ongoing shall automatically be waived when the benefit recipient has satisfied one of the following requirements:~~

~~(a) Has received a disability benefit for twenty years, or~~

~~(b) Has attained age sixty-five.~~

(2) The obligation of filing annual earnings statements and current medical information required by division (D) of section 3309.41 of the Revised Code, and the filing any other information required in this rule shall be waived as follows:

(a) By the board based on a certification of ongoing disability;

(b) If not previously waived, the obligation to file annual earnings statements of a disability recipient whose disability has been certified as ongoing shall automatically be waived when the benefit recipient has satisfied one of the following requirements:

(i) Has received a disability benefit for twenty years, or

(ii) Has attained age sixty-five.

~~(2)~~(3) 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.

~~(3)~~(4) The board or the board's physician may require a disability recipient to submit to a medical examination by an examining physician and a vocational rehabilitation evaluation by a vocational rehabilitation professional or health care professional assigned by the system.

(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 required, submit to a medical examination,
- (3) If required, submit to a vocational rehabilitation evaluation,
- (4) If applicable, obtain any recommended medical treatment and submit medical reports regarding the treatment,
- (5) If applicable, obtain any recommended vocational rehabilitation and submit required reports regarding the rehabilitation,
- (6) Annually file an earnings statement, current medical information, and any other information required by the board.

(K)

- (1) If a recipient refuses to submit to a required examination or evaluation or to file required information, the disability benefits shall be suspended until the examination or evaluation is obtained or the information is filed.
- (2) 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.

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.

- (3) If, when applicable, the recipient fails to obtain required vocational rehabilitation and submit reports regarding the rehabilitation, the disability benefits shall be suspended until the rehabilitation is obtained and the report submitted, or the board physician or consultant certifies that vocational rehabilitation is no longer helpful or advisable.

Vocational rehabilitation is no longer helpful or advisable if:

- (a) The recipient's disability renders the recipient unable to perform the duties of any position and is not expected to improve sufficiently, or
 - (b) After a period of time in which the recipient has complied with recommended vocational rehabilitation, the recipient cannot be reasonably expected to obtain employment in any occupation.
- (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) On reexamination the board's medical advisory committee and/or the board physician shall review the medical and vocational reports and certify to the board whether the recipient continues to be disabled.
- (1) If the medical advisory committee and/or the board physician certifies that the recipient continues to be disabled, the medical advisory committee and/or the board physician shall make recommendations regarding reexamination and, where applicable:
- (a) Recommend a continuation of the medical treatment and/or vocational rehabilitation previously recommended,
 - (b) Recommend a modification in medical treatment and/or vocational rehabilitation, or
 - (c) Certify that the disability is ongoing.

- (2) When the termination standard is whether the recipient can perform any occupation, a recipient ~~may~~shall not be certified for termination as follows:~~unless~~
- (a)
- (i) A SERS appointed vocational consultant has submitted a report that is based on findings made at the time of the review and that identifies a minimum of three positions that meet the any occupation definition and has submitted job descriptions that include a discussion of the physical and mental demands of the position; and
- (ii) An examining physician or the medical advisory committee concludes that the recipient is capable of meeting the physical and mental demands of a minimum of three of the positions; or
- (b) ~~The~~
- (i) ~~A recipient's recipient has submitted an current earnings statement that establishes that the recipient is employed in a position whose annual earnings of are seventy-five per cent or more of the recipient's final average salary, adjusted each year by the actual average increase in the consumer price index prepared by the United States bureau of labor statistics (U.S. city average for urban wage earners and clerical workers: "All items 1982-84=100"); and~~
- (ii) The board physician determines that recipient's current medical records establish no subsequent material decline in the recipient's physical and mental condition.
- (3) If the medical advisory committee and/or the board physician certifies that the recipient meets the applicable standard for termination of disability under division (C) of section 3309.41 of the Revised Code and the board concurs, the board shall:
- (a) Terminate the disability benefits effective as of a date not later than three months after the board's concurrence, or upon notice of employment of the recipient as an employee.
- (b)
- (i) If the leave of absence has not expired when the board votes to terminate the disability benefit, the board shall certify to the recipient and 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 and shall identify the scheduled termination date of the disability benefit.

- (ii) The employer must notify the system if the member returns to work before the scheduled termination date. If the employer fails to notify the system, the amount of benefits paid to the member after the member's return to work shall be paid from amounts allocated under Chapter 3317. of the Revised Code.

(N)

- (1) Disability benefit recipients with a benefit effective date before January 7, 2013 shall be considered on leave of absence from employment during the first five years following the effective date of their disability benefit.
 - (2) Disability benefit recipients with a benefit effective date on or after January 7, 2013 shall be considered on leave of absence from employment during the first three years following the effective date of their disability benefit; thereafter, their leave of absence shall terminate as follows:
 - (a) If medical treatment and/or vocational rehabilitation is not recommended, at the end of the first three years;
 - (b) If medical treatment and/or vocational rehabilitation is recommended, but the recipient is not participating in the recommended treatment or rehabilitation, the earlier of the last month the benefit recipient participated in recommended treatment or rehabilitation or the end of five years following the benefit effective date;
 - (c) If medical treatment and/or vocational rehabilitation was recommended and the recipient is participating in the recommended treatment or rehabilitation, at the end of five years following the benefit effective date.
- (O) A disability benefit recipient is employed for purposes of division (E) of section 3309.41 of the Revised Code if they hold office as a school board member or governing board member as defined in section 3309.012 of the Revised Code, regardless of whether the disability recipient elects membership under that section.
- (1) Upon receipt of notice that a disability recipient holds office as a school board member or governing board member, the system shall notify the recipient that the recipient must terminate their service in order to continue to receive a disability benefit.

- (2) The disability recipient shall send written notice to the system within thirty days from the date on the notice sent under paragraph (O)(1) of this rule, indicating whether they will resign their office.
- (3) If the disability recipient affirms a continuation of service or if the recipient fails to provide notice to the system, the disability benefit shall be terminated on the date the recipient first held office as a school board member or governing board member and any overpayments shall be collected as authorized in Chapter 3309. of the Revised Code.
- (4) If the disability recipient affirms a termination of service, the termination shall be effective on the receipt of the notice described in paragraph (O)(1) of this rule. Any employee contributions remitted for the service shall be unauthorized and returned to the employer.

(P)

- (1) Amounts paid by a member to purchase service credit shall be credited to the employees' savings fund.
- (2) Service credit for a period of disability shall be considered the equivalent of Ohio service credit.
- (3) Service credit granted or purchased under section 3309.41 of the Revised Code for a period of disability shall not result in the member receiving more than one year of service credit for any year as defined in division (R) of section 3309.01 of the Revised Code.

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CERTIFIED ELECTRONICALLY

Certification

04/21/2022

Date

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