

Title 22 STATE RETIREMENT AND PENSION SYSTEM

Subtitle 06 DISABILITY RETIREMENT

Chapter 01 Definitions and General Provisions

Authority: State Personnel and Pensions Article, §§21-110 and 29-101—29-118, Annotated Code of Maryland

.02 Definitions.

A. (Text unchanged)

B. Terms Defined.

(1) – (9) (Text unchanged)

(10) "Independent medical [examination] *evaluation*" means an [examination] *evaluation* by a medical practitioner who:

(a) Has expertise in the diagnosis and treatment of the medical condition of the applicant;

(b) Is not a treating physician of the applicant; and

(c) Is retained by the Retirement Agency to provide an independent medical opinion.

(11) – (14) (Text unchanged)

(15) "Party" means the Retirement Agency or the applicant whose rights are being adjudicated[:

(a) At] *at* a hearing conducted by a judge at the Office[; or

(b) By the Board of Trustees as provided in COMAR 22.06.07].

(16) – (18) (Text unchanged)

.04 When Membership in a State System Ends.

A. (Text unchanged)

B. In the event of the death of a member, membership continues until [the end] *11:59 p.m.* of the date of death of the member.

.05 Effect of Not Diligently Pursuing Claim or Accepting Disability Award.

A. (Text unchanged)

B. Subject to §C of this regulation, the Retirement Agency shall close an applicant's file if the applicant:

(1) (Text unchanged)

(2) Does not agree to report for an independent medical [examination] *evaluation*;

(3) Fails to report for a scheduled independent medical [examination] *evaluation* and does not request a postponement at least 5 business days before the date of the [examination] *evaluation*;

(4) – (6) (Text unchanged)

C. Extensions.

(1) (Text unchanged)

(2) In the case of a request to postpone an appointment for an independent medical [examination] *evaluation* that is received fewer than 5 business days of the date of the scheduled [examination] *evaluation*, the Retirement Agency may only grant the request upon a showing of an emergency or other extenuating circumstances that prevented the applicant's attendance at the [examination] *evaluation*. The Retirement Agency may require that the applicant make the postponement request in writing and provide documentation to support the request.

D. (Text unchanged)

Title 22 STATE RETIREMENT AND PENSION SYSTEM

Subtitle 06 DISABILITY RETIREMENT

Chapter 02 Filing for Disability Retirement

Authority: State Personnel and Pensions Article, §§21-110 and 29-101—29-118, Annotated Code of Maryland

.02 Statement of Disability.

- A. A Statement of Disability submitted to the Retirement Agency shall:
 - (1) (Text unchanged)
 - (2) Give the applicant's consent to report for one or more independent medical [examinations] *evaluations* at the request of the Retirement Agency; and
 - (3) (Text unchanged)
- B. – C. (Text unchanged)

.04 Disability Form Filed by a Former Member.

- A. – B (Text unchanged)
- C. To determine whether the former member's failure to apply for disability retirement before the date membership ended was attributable solely to the physical or mental incapacity of the former member during the filing period, the medical board:
 - (1) – (2) (Text unchanged)
 - (3) May request the former member to:
 - (a) (Text unchanged)
 - (b) Report for an independent medical [examination] *evaluation*.
- D. Medical Board Determination.
 - (1) – (2) (Text unchanged)
 - (3) If the medical board determines that the former member's failure to file was not attributable solely to the physical or mental incapacity of the former member before the date membership ended, the former member may request a reconsideration of the medical board's decision by following the procedures set forth in COMAR 22.06.03.03. If, after reconsideration, the medical board affirms its initial decision and rejects the former member's disability forms, the former member may request a hearing before a judge to be conducted as provided in COMAR 22.06.06 *by filing a written request for a hearing not later than 30 days after the date of the notice of the medical board's determination.*

Title 22 STATE RETIREMENT AND PENSION SYSTEM

Subtitle 06 DISABILITY RETIREMENT

Chapter 03 Review of Claims for Disability Retirement

Authority: State Personnel and Pensions Article, §§21-110 and 29-101—29-118, Annotated Code of Maryland

.01 Disability Unit's Review.

A. Disability Forms Review.

(1) – (2) (Text unchanged)

(3) Denial of Disability Claim.

(a) If the Disability Unit determines that the applicant has not satisfied the requirement set forth in §A(1)(b) or (c) of this regulation:

(i) The Retirement Agency shall deny the disability claim; and

(ii) The Disability Unit shall provide the applicant written notice of the denial of the disability claim and the applicant's appeal rights under §A(3)(b) and (c) of this regulation and *in accordance with* COMAR [22.06.07.06] 22.06.05.05.

(b) The applicant may appeal the denial of the disability claim by submitting a written request for a hearing *in the format required under COMAR 22.03.04.07B* to the Executive Director within 30 days of the date of the Disability Unit's notice of the denial of the disability claim.

(c) (Text unchanged)

B. – D. (Text unchanged)

.02 The Medical Board's Review.

A. – B. (Text unchanged)

C. Procedures for Medical Board's Review.

(1) (Text unchanged)

(2) The medical board may take one or more of the following actions to facilitate its review of the applicant's claim:

(a) (Text unchanged)

(b) Require the applicant to report for an independent medical [examination] *evaluation*; or

(c) Suspend its review for a period not to exceed [180 days] *one year* in order to evaluate the effectiveness of treatment or consider whether an applicant has reached maximum medical improvement.

Title 22 STATE RETIREMENT AND PENSION SYSTEM

Subtitle 06 DISABILITY RETIREMENT

Chapter 04 Reconsideration

Authority: State Personnel and Pensions Article, §§21-110 and 29-101—29-118, Annotated Code of Maryland

.01 Reconsideration.

- A. – B. (Text unchanged)
- C. The medical board or the Disability Unit may take one or more of the following actions to facilitate reconsideration:
 - (1) (Text unchanged)
 - (2) Require the applicant to report for an independent medical [examination] evaluation; or
 - (3) Suspend review for a period not to exceed [180 days] *one year* until a determination can be reached regarding the effectiveness of treatment or whether the applicant has reached maximum medical improvement.
- D. – E. (Text unchanged)

Title 22 STATE RETIREMENT AND PENSION SYSTEM

Subtitle 06 DISABILITY RETIREMENT

Chapter 06 Hearings Before the Office

Authority: State Personnel and Pensions Article, §§21-110(b) and 29-101—29-118, Annotated Code of Maryland

.02 Hearings — General.

A. When Hearings Shall Be Held.

(1) [At the request of] *If an applicant timely files a written request for a hearing*, a hearing shall be held if:

(a) The Board of Trustees denied the applicant a disability retirement allowance under COMAR 22.06.05; [or]

(b) The medical board rejected the disability forms submitted by a former member under COMAR 22.06.02.04; *or*

(c) *The Disability Unit denied the disability claim of an applicant under COMAR 22.06.03.01A(3).*

(2) (Text unchanged)

[(3) The Executive Director or Board of Trustees may refer an appeal for a hearing before a judge on the issue of whether an applicant has satisfied the requirements set forth in COMAR 22.06.03.01A(1)(b) or (c).]

B. – F. (Text unchanged)

G. [Proposed] Final Decision.

(1) The judge shall prepare a summary of the testimony, comment on credibility and demeanor of the witnesses, and prepare [proposed] *written findings of fact and [proposed] conclusions of law, and shall issue a final decision within 90 days after the completion of the hearing.*

(2) The judge shall mail a copy of the [proposed] decision to the parties and the Board Secretary.

[(3) The judge shall provide written notice to the parties that a party, including the representative of the Retirement Agency, has 15 days from the date of the proposed decision to file written exceptions to the proposed findings.

H. Exceptions.

(1) Exceptions shall be filed with the Board Secretary within 15 days after the date of the proposed decision.

(2) Exceptions shall be in writing and contain a concise statement as to each portion of the judge's determination to which exception is taken and the asserted basis for the exception.

(3) A party that refers to any evidence produced at the hearing before the judge shall identify the specific evidence in the party's exceptions.

(4) A party shall not submit additional evidence for consideration by the Board of Trustees.

(5) A party may file with the Board Secretary a copy of the transcript of the full hearing, at that party's expense, at the time of filing the exceptions.

(6) A copy of the exceptions shall be served on all parties to the proceedings, their representatives, and the Board Secretary.]

.03 Judicial Review.

A party who is aggrieved by a final decision of a judge is entitled to judicial review of the decision in accordance with State Government Article, §10-222, Annotated Code of Maryland.

.04 Adjustment in Allowance.

The Retirement Agency shall adjust the allowance of a retiree who is subsequently granted an ordinary disability retirement or an accidental disability retirement retroactively to the effective date of retirement.

.05 Effect of Death before Final Decision.

If the applicant dies before the final decision on the applicant's appeal for an ordinary disability retirement or an accidental disability retirement, or both, the claim shall terminate. Survivor benefits, if any, shall be paid in accordance with the selection made by the applicant for the retirement allowance granted and accepted before death.

Title 22 STATE RETIREMENT AND PENSION SYSTEM

Subtitle 06 DISABILITY RETIREMENT

[Chapter 07 Final Decision by the Board of Trustees

Authority: State Personnel and Pensions Article, §§21-108, 21-110, and 21-111, Annotated Code of Maryland

.01 Receipt of Proposed Decision.

As soon as practical after receipt of a proposed decision and any exceptions, the Board Secretary shall forward to the medical board those decisions which involve the issue of whether or not an applicant is disabled for processing as provided in Regulation .05 of this chapter, and the Board Secretary shall consider those decisions which involve a proposed default order as provided in Regulation .07 of this chapter. An appeal of a denial of a disability claim because the applicant has not satisfied the requirements set forth in COMAR 22.06.03.01A(1)(b) or (c) shall be processed as provided in Regulation .06 of this chapter. All other cases shall be processed as provided in Regulations .02—.04 of this chapter.

.02 Official Record.

A. Within a reasonable time before the Board of Trustees' meeting, the Board Secretary shall provide a copy of the official record of the hearing compiled by the judge, the proposed decision, and any exceptions filed by a party to each member of the Board of Trustees and each party.

B. The Board of Trustees may not accept additional evidence or hear testimony of witnesses.

.03 Exceptions Hearing Before the Board of Trustees.

A. Subject to §B of this regulation, the Board Secretary shall:

(1) Schedule the exceptions hearing before the Board of Trustees; and

(2) Notify the parties in writing of:

(a) The party's right to present argument at an exceptions hearing and to be represented by an attorney who is licensed to practice law in Maryland; and

(b) The date, time, and place for the exceptions hearing.

B. Request for Postponement or to Participate by Telephone.

(1) Postponement Request.

(a) Except in the case of an emergency or unusual circumstances, a request for postponement of the exceptions hearing may not be granted by the Board Secretary unless it is received by the Board Secretary not later than 20 days from the date of the notice of the exceptions hearing issued by the Board Secretary in accordance with §A(2) of this regulation.

(b) In the case of a postponement request that is received more than 20 days after the date of the notice of the exceptions hearing, the Board Secretary may only grant the request upon a showing of an emergency or other unusual circumstances. The Board Secretary may require that the party make the postponement request in writing, or provide documentation to support the request for a postponement.

(2) Request to Participate by Telephone.

(a) Before the date of a scheduled exceptions hearing, a party may request to appear by telephone at an exceptions hearing, instead of a personal appearance.

(b) The Board Secretary may approve a request to appear by telephone if the party resides outside of Maryland or presents other good cause for the request.

C. Appearance of Parties at Exceptions Hearings; Failure to Appear.

(1) An applicant may represent oneself at an exceptions hearing, or may be represented by an attorney who is licensed to practice law in Maryland.

(2) Except where a party has been granted a postponement as provided in §B(1) of this regulation, if a party fails to appear at the scheduled date, time, and place of the exceptions hearing, the failure is considered a waiver of the request to make argument and the Board of Trustees shall issue a final decision as provided in Regulation .04 or .05G of this chapter.

D. Conduct of Argument.

(1) The party's claim shall be called to order by the presiding officer.

(2) The presiding officer shall:

(a) Allow the party or the party's attorney to present the party's argument;

(b) Regulate the course of the argument, including the conduct of the parties and their attorneys;

(c) Limit the period of time for argument;

(d) Restrict the party's argument if it is irrelevant, immaterial, or unduly repetitious; and

(e) Exclude evidence that is not in the official record.

(3) Following each party's presentation, members of the Board of Trustees may ask questions.

.04 Final Decision.

A. The Board of Trustees shall issue a final decision based solely on:

(1) The official record compiled by the judge;

- (2) The proposed decision of the judge;
- (3) The written exceptions filed by a party to the proposed decision; and
- (4) Arguments, if any, presented to the Board of Trustees at an exceptions hearing.
- B. The Board of Trustees shall:
 - (1) Adopt or reject the proposed decision of the judge, with or without modification, granting or denying a disability; or
 - (2) Remand the applicant's claim to the judge.
- C. The Board of Trustees shall identify any changes, modifications, or amendments to the proposed decision and the reason for the changes, modifications, or amendments.
- D. If the Board of Trustees remands an applicant's claim to the judge, the Board of Trustees shall specify the reason for the remand and the additional review requested.
- E. The Board Secretary shall:
 - (1) Notify the parties in writing of the Board of Trustees' final decision with respect to the applicant's claim; and
 - (2) Advise the applicant of the applicant's right to:
 - (a) Receive a retirement allowance in accordance with COMAR 22.06.05.03 or 22.06.05.04, except that the applicant's right to appeal the denial of an accidental disability retirement shall be governed by Regulation .08 of this chapter; or
 - (b) Appeal the denial of a disability retirement under Regulation .08 of this chapter.

.05 Final Decision in "Disabled or Not" Cases.

- A. In an appeal regarding the issue of whether or not an applicant is disabled, the medical board shall review the:
 - (1) Official record of the hearing compiled by the judge;
 - (2) Proposed decision of the judge; and
 - (3) Exceptions filed to the proposed decision.
- B. The medical board may not accept additional evidence or hear testimony.
- C. Within a reasonable time after the medical board completes its review under §A of this regulation, the medical board shall issue a decision as to whether or not an applicant is disabled. The medical board's decision shall be in writing and shall contain the reason or reasons for the decision.
- D. The Board of Trustees may not grant an application for disability retirement unless the medical board certifies that:
 - (1) The member is mentally or physically incapacitated for the further performance of the normal duties of the member's position;
 - (2) The incapacity is likely to be permanent; and
 - (3) The member should be retired.
- E. If the medical board's decision is favorable to an applicant, the Board Secretary shall include the applicant's name on the disability report for action by the Board of Trustees as provided in COMAR 22.06.05.02.
- F. If the medical board's decision is adverse to an applicant, the Board Secretary shall notify the parties of the applicant's right to present argument to the Board of Trustees in accordance with the procedures established under Regulations .02 and .03 of this chapter.
- G. Final Decision of the Board of Trustees — Disabled or Not.
 - (1) After hearing argument at an exceptions hearing, or if the party elected to waive the party's right to present argument to the Board of Trustees, a majority of the Board of Trustees shall issue a decision based solely on:
 - (a) The official record compiled by the judge;
 - (b) The proposed decision of the judge;
 - (c) The written exceptions filed by a party to the proposed decision;
 - (d) The medical board's decision; and
 - (e) Argument, if any, presented to the Board of Trustees at an exceptions hearing.
 - (2) The Board of Trustees shall:
 - (a) Affirm the decision of the medical board and deny the applicant a disability retirement; or
 - (b) Remand the applicant's claim to the medical board for further review.
 - (3) If the Board of Trustees remands the applicant's claim to the medical board, the Board of Trustees shall specify the reason for the remand and the additional review requested.
- H. The denial of an application for disability retirement under §G(2)(a) of this regulation is a final decision of the Board of Trustees which may be appealed under Regulation .08 of this chapter.
- I. If the Board of Trustees denied the application for disability retirement under §G(2)(a) of this regulation, the Board Secretary shall notify the parties of the Board of Trustees' final decision and advise the applicant of the applicant's right to appeal the Board of Trustees' decision under Regulation .08 of this chapter.

.06 Final Decision on Summary Decision.

- A. This regulation applies only if an applicant appeals the Retirement Agency's denial of a disability claim because the applicant has not satisfied the requirements set forth in COMAR 22.06.03.01A(1)(b) or (c).
- B. If an applicant timely appeals the denial of a disability claim, the Executive Director shall:
 - (1) Refer the appeal for a hearing before a judge as provided under COMAR 22.06.06; or
 - (2) Refer the appeal for a summary decision in accordance with §§C and D of this regulation.
- C. Proposed Summary Decision.

(1) The Executive Director shall issue a written notice of hearing on summary decision in accordance with COMAR 22.06.07.06.

(2) The hearing notice shall state:

(a) A statement of the matters at issue at the hearing;

(b) The proposed summary decision of the Executive Director;

(c) The date, time and location of the hearing on summary decision before the Board of Trustees;

(d) The applicant's right to submit a written response to the Board of Trustees regarding the recommended summary decision not later than 10 days before the date of the hearing; and

(e) The applicant's right to present argument to the Board of Trustees and be represented by an attorney who is licensed to practice law in Maryland at the hearing.

D. Following review of the applicant's hearing request, the Executive Director's recommended summary decision, any written response to the recommended summary decision submitted by the applicant, and any argument presented to the Board of Trustees at a hearing, a majority of the Board of Trustees shall:

(1) Issue a summary decision; or

(2) Refer the appeal for a hearing as provided under COMAR 22.06.06.

E. The Board of Trustees may issue a summary decision if it finds that:

(1) There is no dispute of material fact; and

(2) The Agency or the applicant is entitled to prevail as a matter of law.

F. A summary decision is the final administrative decision of the Board of Trustees which may be appealed under Regulation .08 of this chapter. The Board Secretary shall notify the parties of the Board of Trustees' decision, and if the decision is adverse to the applicant, notify the applicant of the applicant's right to appeal the Board of Trustees' decision under Regulation .08 of this chapter.

.07 Final Decision of the Board Secretary.

A. This regulation applies only if a judge issues a proposed default order against a defaulting party in a case.

B. A defaulting party may submit a written motion to vacate a proposed default order to the Board Secretary within 30 days after the date of the order. The motion shall state the reasons for the failure to attend or participate in the hearing.

C. On receipt of a proposed default order and any written motion from a defaulting party, the Board Secretary shall consider the proposed default order and any grounds stated in a motion to vacate. The Board Secretary may contact the parties or the Office to obtain additional information about reasons for the default.

D. If the Board Secretary finds that there is:

(1) Good cause to excuse the default, the Board Secretary may vacate the proposed default order, and return the case to the Office for further appropriate proceedings; or

(2) Not good cause to excuse the default, the Board Secretary shall deny the motion, if one was filed, and issue a final default order terminating further proceedings.

E. At the next regularly scheduled meeting of the Board of Trustees following the Board Secretary's consideration of a proposed default order, the Board Secretary shall advise the Board of Trustees as to the action taken.

.08 Appeal.

A party adversely affected by a final decision of the Board of Trustees or the Board Secretary is entitled to judicial review of the decision in accordance with State Government Article, §10-222, Annotated Code of Maryland.

.09 Adjustment in Allowance.

The Retirement Agency shall adjust the allowance of a retiree who is subsequently granted an ordinary disability retirement or an accidental disability retirement retroactively to the effective date of retirement.

.10 Effect of Death before Final Decision.

If the applicant dies before the final decision on the applicant's appeal for an ordinary disability retirement or an accidental disability retirement, or both, the claim shall terminate. Survivor benefits, if any, shall be paid in accordance with the selection made by the applicant for the retirement allowance granted and accepted before death.]