

## 1016. Claims appeal procedure.

- (a) *Process for members to request review of claim denial.* If the retirement system manager or staff denies a member's application for a pension benefit, either in whole or in part, the member may appeal the retirement system manager's or staff's decision by submitting a written request for review of the decision to the board's administrative office no later than one hundred twenty (120) days after the date the denial notice is received by the member. The retirement system manager or staff shall provide the member with a copy of this rule with the denial notice. The written request for review must include the member's reason for disputing or disagreeing with the initial decision. If a member files a timely written request for review, he may:
- (i) Submit additional materials for consideration by the board, including a written request for review. The board's decision may be delayed pending receipt of such requested information or may be issued in the absence of such requested information if the member does not respond to the request for additional information. The board's written decision will explain the reasons for the decision and will refer to provisions of the Milwaukee County Code of Ordinances and rules on which it is based; ;
  - (ii) Review, upon request, documents under the control of the board which are relevant to the member's claim; and
  - (iii) Attend the board meeting at which the claim appeal will be reviewed.
- (b) *Decision on review.* The board will review a member's timely written request for review and shall issue a written decision following the board's review of the denied claim within one hundred twenty (120) days of the date the board receives the member's written request for review or, if special circumstances require a delay in the decision, the member will receive a notice of the reasons for the delay within the same period. The board shall be entitled to request additional information from the member to the extent necessary and appropriate to respond to the member's request for review. The board's decision may be delayed pending receipt of such requested information or may be issued in the absence of such requested information if the member does not respond to the request for additional information. The board's written decision will explain the reasons for the decision and will refer to the provisions of the Milwaukee County Code of General Ordinances and rules on which it is based.
- (c) *Decision on appeal shall be final.* All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with the system, whether as to any claim for benefits, or as to the construction of language or meaning of the Milwaukee County Code of Ordinances or rules, or as to any writing, decision, instrument or account in connection with the operation of the system or otherwise, shall be submitted to the board or, where board responsibility has been delegated to others, to such delegates for decision. The

board's decision on any such matters, including with respect to a member's request for a review, shall be final and binding upon all persons dealing with the board or the system or claiming any benefit thereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court having jurisdiction over such matter.

## 1050. Offset

- (1) *Recalculation/Cessation of Benefit.* Upon discovery of a payment in error, a determination shall be made regarding whether a benefit should have been paid under the Ordinances and Rules.
  - (a) If the benefit should not have been paid, then the benefit shall cease, and a letter shall be sent to the member or beneficiary explaining the error and requesting repayment of the overpayment, plus interest from the date paid.
  - (b) If a benefit should have been paid but in a different amount, the member's and/or beneficiary's benefit shall be recalculated to reflect the accurate amount under the Ordinances and Rules. The corrected benefit amount shall be paid to the member and/or beneficiary going forward, and any necessary reduction to recover the overpayment shall be made in accordance with subsection (2) below.
  - (c) Eligible individuals may appeal these determinations pursuant to Rule 1016.
- (2) *Offset.* If a member and/or beneficiary receives benefits exceeding those to which the individual(s) is or are entitled under the Ordinances and Rules, future benefit payments to a member and/or beneficiary from ERS may be reduced until the amount of the overpayment, plus interest from the date paid, has been recovered by ERS. This right of offset shall not limit the rights of ERS to recover such overpayments in any other manner.
  - (a) *Amount of Offset.* If the Retirement Office determines that an offset is appropriate, the Retirement Office shall reduce the affected individual's ERS benefit payments by up to one hundred (100) percent until ERS has fully recovered the amount of the overpayment, plus interest from the date paid. This reduction shall begin at the time indicated in subsections (c) and (d) below.

In determining the amount of the offset, the Retirement Office, and the Pension Board on appeal, should consider all of the following factors:

- (i) The reason for the overpayment (e.g., fraud, miscalculation, mistake). If the individual played a part in receiving the overpayment, the percentage of offset could be greater.
- (ii) The life expectancy of the individual. The overpayment should be recovered, if possible, before the death of the last beneficiary.
- (iii) The amount of the benefit versus the overpayment to be recovered (e.g., if it is a smaller benefit and larger overpayment, the offset would need to be greater).

- (iv) The financial resources available to the individual to satisfy the amount of the overpayment, plus interest, from resources other than the individual's ERS benefit.
- (b) *Interest Rate.* The interest rate payable on the overpayment shall be at the rate specified in and pursuant to Rule 403.
- (c) *Offset Procedures.* Upon discovery of an overpayment, the Retirement Office shall notify the affected individual in writing and explain the nature and amount of the overpayment. The following information shall also be included in the notice:
  - (i) a request that the individual repay the overpayment in a lump sum payment;
  - (ii) a statement that if the member declines to repay the overpayment in a lump sum, ERS intends to reduce the amount of the individual's future benefit payments until the overpayment amount, plus interest, has been recovered;
  - (iii) the effective date of the offset;
  - (iv) the amount that was overpaid;
  - (v) the total recovery amount (i.e., the overpayment plus interest from the date paid);
  - (vi) if applicable, the corrected benefit amount that the member is entitled to receive;
  - (vii) a statement regarding the tax treatment of the overpayment (e.g., if a portion of the overpayment was rolled over, favorable tax treatment may not be available);
  - (viii) the reduced benefit amount that will be paid to the individual after the offset is applied;
  - (ix) a statement that the individual may appeal the Retirement Office's decision pursuant to the process described in subsection (d) below.
- (d) *Appeals.*
  - (i) *Initial Appeal Process.* The member may appeal the offset decision and amount of the offset to the Pension Board at the Pension Board meeting immediately following the notice of offset at which it is possible to schedule the appeal (or the Pension Board could call a special meeting). If the member appeals to the Pension Board, the offset will not commence until a decision

regarding the offset has been made by the Pension Board. If the Pension Board determines that the offset is correct and consistent with this Rule, ERS will implement the offset as soon as administratively possible. If the member does not appeal under this initial appeal process, the Retirement Office will commence the offset as of the date specified in the notice.

- (ii) *Rule 1016 Appeal Process.* After the initial decision of the Pension Board, the individual subject to offset may appeal to the Pension Board as described in Rule 1016. The individual may appeal under Rule 1016 regardless of whether the member utilized the initial appeal. However, if the offset commenced as of the date described in the notice, the offset will continue unless and until the Pension Board determines on appeal that the offset is improper. If the offset is determined to be improper, the individual will be repaid the amount previously withheld.
- (iii) *No Appeal for Subsequent Offset.* If a beneficiary's payments are offset to recover an overpayment made to a member, the beneficiary shall not have an independent right to appeal if the member utilized the appeal rights granted by this Rule or Rule 1016.

### **1055. Non-disability benefit determination and appeal procedures.**

The following procedures generally govern appeals requested under Rules 1016 and 1050. Appeals related to disability pensions described in Ordinance sections 201.24(4.3) and (4.4) are not governed by these procedures.

- (1) *Initial benefit determination.* Upon receipt of a claim for benefits, the Retirement Office shall make an initial benefit determination.
  - (a) The Retirement Office, when reviewing a claim for benefits, may determine that additional information from the County or another agency, not within the records of ERS, is necessary to review the claim.
    - (i) The Retirement Office may request that the appropriate County department or other agency provide the necessary information in writing to ERS.
    - (ii) Any such information provided by the County or other agency may be sent to the Pension Board as provided in section (4) below.
  - (b) If, upon review, the Retirement Office has denied a claim for benefits, in whole or in part, the Retirement Office shall prepare a letter to the claimant explaining the Retirement Office's decision.
    - (i) The letter may reference the applicable Ordinances and Rules and explain the Retirement Office's reasons for the denial.
    - (ii) The letter may be sent on ERS letterhead and will include general information regarding the claimant's right to appeal the Retirement Office's decision to the Pension Board.
  - (c) If information regarding a claim determination made by the Retirement Office is received by an individual on the Pension Board prior to the date the claimant appears before the Pension Board, the individual on the Pension Board should provide that information to the Retirement Office.
- (2) *Notice of appeal.*
  - (a) Upon the Retirement Office's receipt of a request for appeal under Rule 1016 or Rule 1050, the Retirement Office should determine the next Pension Board meeting at which it is possible to schedule the appeal, taking into account the date the appeal is sent to the Retirement Office and the information submission deadline in subsection (e) below.
  - (b) The Retirement Office shall send a letter to the appellant on Pension Board letterhead that is authorized and signed by the chairperson or vice chairperson of the Pension Board specifically or pursuant to standing

instructions. The letter may be signed electronically or by any other process, including by mail. The letter will generally:

- (i) Inform the appellant of the date of the Pension Board meeting at which the appeal is scheduled to be heard;
  - (ii) Provide the date by which the appellant must submit all information and documents that the appellant desires the Pension Board to consider; and
  - (iii) Advise that the Pension Board, in its discretion, may postpone the appeal until a later meeting if additional information or documents are received after the stated deadline.
- (c) The Retirement Office should add the appeal to the appropriate Pension Board agenda.
  - (d) The Retirement Office may contact appropriate counsel to request review of the appeal and should provide counsel with the information submitted by the appellant and in the possession of the Retirement Office in connection with the claim denial and appeal.
  - (e) Based on the Pension Board meeting date at which the review is scheduled, the Retirement Office may set a date by which the appellant must submit all information and documents that the appellant desires to be considered by the Pension Board in connection with the appeal. Information and documents are generally required to be submitted to the Retirement Office by 4:30 p.m. on that date.
- (3) *Written verification of facts from County.* When reviewing an appeal, counsel may determine that additional information from the County or another agency, not within the records of ERS, is necessary to the review of an issue related to the appeal. The Retirement Office or Corporation Counsel may request that the appropriate County department or other agency provide the necessary information in writing to the Retirement Office or Corporation Counsel's office.
- (4) *Materials sent to Pension Board.*
- (a) *Non-confidential/non-privileged materials.* Prior to the Pension Board meeting in which an appeal is scheduled to be reviewed, the Retirement Office may send to the Pension Board any non-confidential or non-privileged materials related to the appeal, including a summary of the facts, relevant Ordinances and Rules, and any exhibits.
  - (b) *Confidential/privileged materials.* Prior to the Pension Board meeting in which an appeal is scheduled to be reviewed, appropriate counsel may send any confidential or privileged materials related to the appeal to the Pension Board, including a summary analysis of the appeal and any

enclosures that include confidential information. These confidential or privileged materials are separate and distinct from non-confidential and non-privileged materials sent to the Pension Board by the Retirement Office.

- (c) The Pension Board should generally have available all materials submitted by the appellant and in the possession of the Retirement Office in connection with the claim denial and appeal.
- (5) *De novo standard of review.* In reviewing an appeal, the Pension Board will review all information available to it and shall render a decision independent of the Retirement Office's initial determination.
- (6) *Review of the appeal by the Pension Board.* Where applicable, the Pension Board meeting agenda should note that the appeal will be discussed in closed session. The Pension Board will generally adhere to the following procedures for hearing and reviewing an appeal at the Pension Board meeting:
  - (a) The Pension Board will first conduct its hearing with the appellant in open session on the record, and the appellant, or the appellant's authorized representative, may present the appeal to the Pension Board.
    - (i) The Pension Board may advise appellants of the open and closed session procedures described below and invite them to remain in the building if they desire to attend any subsequent open sessions that may arise regarding their appeals.
    - (ii) If an appellant's medical information or other personal information would compel a hearing in closed session, that portion of the meeting may be held in closed session to the extent permitted under Wisconsin law.
  - (b) Where appropriate and permitted under Wisconsin law, the Pension Board may enter into closed session to review and discuss the appeal with counsel.
    - (i) When the Pension Board enters into closed session, the closed session shall include the Pension Board members and counsel.
    - (ii) Retirement Office staff shall generally be excused from closed session any time that the appellant or appellant's representative is also excused from closed session.
    - (iii) If, during closed session, the Pension Board has a question that requires the assistance of an outside individual, the Pension Board may return to open session to discuss its question with the appropriate individual and thereafter return to closed session to complete any further discussion regarding the appeal.



- (c) If the Pension Board determines it needs additional information to make a decision, the provisions of section (9) below shall be followed.
- (d) If the Pension Board determines that the issues on appeal require further discussion, the provisions of section (10) below shall be followed.
- (e) After completing its review and consideration of the appeal, and assuming the Pension Board does not require additional information and the appeal does not warrant further discussion, the Pension Board may proceed to make a decision on the appeal as provided in section (7) below.

(7) *Pension Board's decision.*

- (a) After it reviews the appeal, the Pension Board may return to open session and vote on the appeal. The Pension Board shall adopt the rationale for its decision based on all available evidence, the Ordinances and Rules and applicable law.
- (b) Unless the Pension Board directs that the full Board should review and approve the written document summarizing the Pension Board's decision, the chairperson and vice chairperson of the Pension Board may finalize, with input from counsel, the written decision of the Pension Board. The Pension Board may adopt a separate resolution delegating the review and approval.
- (c) The written decision as approved by the chairperson and/or vice chairperson of the Pension Board will generally be included as part the meeting minutes to be approved at the next Pension Board meeting and will be sent to the appellant as described below in section (8).

(8) *Notification of decision on appeal.*

- (a) *Letter to appellant.* Upon approval of the written decision on appeal, the appellant will receive a letter informing the appellant of the Pension Board's decision. The letter may be prepared on Pension Board letterhead that may be authorized and signed by the chairperson or vice chairperson of the Pension Board specifically or pursuant to standing instructions. The letter may be signed electronically or by any other process, including by mail.
  - (i) The letter shall include a copy of the written decision issued by the Pension Board.
  - (ii) The letter may advise the appellant that the decision represents the final decision of the Pension Board and note that the appellant may request that a court review the Pension Board's decision.

- (b) *Copies to Retirement Office.* When necessary, appropriate counsel shall send to the Retirement Office a copy of the Pension Board's decision on appeal and a copy of the letter sent to the appellant.
- (9) *Additional information required.* If the Pension Board *determines* it needs additional information to make a decision on the appeal, the Pension Board shall:
  - (a) Request that the Retirement Office place the continuation of the appeal on the Pension Board's agenda for a subsequent meeting; and
  - (b) Request that the Retirement Office provide the appellant with a letter advising that additional information is required to make a decision.
    - (i) The letter may include the same information as the letter described in section (2) above, but this letter may also include a list of the additional information needed by the Pension Board to make a decision if the appellant has access to such information. This notice may be provided even if the appellant appeared at a prior meeting.
    - (ii) The letter may be prepared on Pension Board letterhead and authorized and signed by the chairperson or vice chairperson of the Pension Board specifically or pursuant to current or future standing instructions. The letter may be signed electronically or by any other process, including by mail.
- (10) *Additional discussion necessary before approval of decision.*
  - (a) If the Pension Board determines that further discussion is necessary before approval of the written decision, the Pension Board may decline to vote on the appeal at that meeting, and the appeal may be reconsidered at a future meeting.
  - (b) Because the Pension Board will be discussing the appeal at a subsequent meeting, the Retirement Office will notify the appellant of the meeting and follow the procedures provided in section (2) above. The letter may also advise whether the Pension Board will allow the appellant an additional opportunity to speak or otherwise present additional information to the Pension Board.
  - (c) At the subsequent meeting at which the Pension Board continues its discussion of the appeal, the Pension Board may follow the applicable procedures provided in sections (6) and (7) above.
- (11) *Deviations from Procedures.* The Pension Board and the Retirement Office intend to follow the procedures described in this Rule. However, due to facts and circumstances unique to each claim and/or appeal, the Pension Board and Retirement Office in their respective sole discretion may deviate from the

described procedures. Deviation from the procedures provided in this Rule shall not invalidate a proceeding or decision or be a basis for a legal claim except where such deviation has clearly resulted in significant prejudice or deprivation of due process.