

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
State Retirement and Pension System
(DLS Control No. 15-431)**

Overview and Legal and Fiscal Impact

These regulations eliminate exceptions hearings before the Board of Trustees, granting final decision making authority in disability case appeals to the Office of Administrative Hearings (OAH). The regulations also extend the time period in which the State Retirement Agency must determine whether an applicant for a disability allowance has reached maximum medical improvement. In addition, the regulations change the defined term “independent medical examination” to “independent medical evaluation” and make technical and conforming changes.

The regulations present no legal issues of concern.

There is a potentially minimal effect on State pension liabilities and contributions. There is no effect on local revenues or expenditures.

Regulations of COMAR Affected

State Retirement and Pension System:

Disability Retirement: Definitions and General Provisions:

COMAR 22.06.01.02, .04, and .05

Filing for Disability Retirement: COMAR 22.06.02.02 and .04

Review of Claims for Disability Retirement: COMAR 22.06.03.01 and .02

Reconsideration: COMAR 22.06.04.01

Hearings Before the Office: COMAR 22.06.06.02, .03, .04, and .05

Final Decision by the Board of Trustees: COMAR 22.06.07.01 - .10

Legal Analysis

Summary of Regulations

Under current procedures, applications for disability benefits that are initially denied may be appealed to OAH. However, OAH issues only a proposed decision, which the board may approve or reject. If the board’s decision regarding the proposed decision is adverse to the applicant, the applicant is entitled to an exceptions hearing before the board. These regulations repeal COMAR 22.06.07, thereby eliminating exceptions hearings before the board, and vesting final decision making authority with OAH. The regulations make conforming changes repeal references in Subtitle .06 to the repealed Chapter .07.

Under COMAR 22.06.01.02, the regulations change the defined term “independent medical examination” to “independent medical evaluation”. The regulations make conforming changes Chapters .01, .02, .03, and .04.

The regulations clarify that, under COMAR 22.06.01.04, membership continues until 11:59 p.m. of the date on which a member dies. The regulations also amend COMAR 22.06.02.04D so as to require that a request for hearing be filed not later than 30 days after the medical board determines a former member’s failure to file for disability retirement was not attributable solely to the physical or mental incapacity of the former member.

Currently, under COMAR 22.06.03.02 and 22.06.04.01, the medical board may suspend its review of a claim for a period not exceeding 180 days in order to evaluate the effectiveness of treatment or to consider whether an applicant has reached maximum medical improvement. These regulations extend that timeframe to a period not exceeding one year.

The regulations repeal provisions pertaining to the process for taking exceptions to a proposed decision issued by OAH under COMAR 22.06.06.02. Consequently, the regulations change references to proposed decision to reflect the OAH decision being a final decision. The regulations add new regulations .03, .04, and .05 to the chapter. Regulation .03 allows a party who is aggrieved by a final decision by OAH to judicial review of the decision. Regulation .04 requires the State Retirement Agency to retroactively adjust the allowance of a retiree who is subsequently granted a disability retirement. Regulation .05 specifies that if an applicant dies before the final decision on an applicant’s appeal, the claim shall terminate.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The State Retirement Agency cites §§ 21-108, 21-110, 21-111, and 29-101 through 29-118 of the State Personnel and Pensions Article as statutory authority for the regulations. Section 21- 108 establishes that the Board of Trustees for the State Retirement and Pension System is responsible for the management, general administration, and operation of the several systems. Section 21-110 requires the board to adopt regulations for the administration of the several systems. Section 21-111 authorizes the board to hold hearings as necessary to perform its duties and specifies the hearings are governed by regulations of the board. Sections 29-101 through 29- 118 govern disability benefits available to members of the State Retirement and Pension System.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

There is a potentially minimal effect on State pension liabilities and contributions. There is no effect on local revenues or expenditures.

Agency Estimate of Projected Fiscal Impact

The State Retirement Agency advises that the regulations have no fiscal impact because the changes are amending internal procedures and practices of the Board of Trustees for the State Retirement and Pension System. The Department of Legislative Services agrees that the regulations have no direct effect on agency expenditures or on State pension liabilities and contributions. However, two of the regulations have the potential to affect whether the board grants disability benefits to individual applicants. In both cases, the regulations make it less likely that disability benefits are awarded in individual cases. To the extent that the regulations result in fewer disability awards being made, State pension liabilities and contributions decrease. The number of affected cases is not expected to be significant, so any fiscal effect on liabilities and contributions is not expected to be significant.

One of the regulations proposes extending the medical board's discretion to delay reviewing a case from 180 days to one year to determine whether maximum medical improvement has been achieved. The reason for this change is that the medical boards have advised that some conditions and treatments take up to a year to determine if maximum medical improvement has been achieved. Therefore, making a determination of eligibility for disability benefits before sufficient time has passed is premature. By extending the deferral period to one year, the regulation makes it more likely that an applicant's medical condition can improve to the point that the applicant is no longer disabled and, therefore, not eligible for a disability benefit.

A second regulation eliminates exceptions hearings before the Board of Trustees, thereby granting final decision making authority in disability case appeals to the Office of Administrative Hearings (OAH). Under current procedures, applications for disability benefits that are initially denied may be appealed to OAH. However, OAH issues only a proposed decision, which the board may approve or reject. If the board's decision with regard to the proposed decision is adverse to the applicant, the applicant is entitled to an exceptions hearing before the board. Historically, the board hears 20 – 30 exceptions annually, and it overturns only a handful of cases each year. By eliminating the exceptions hearing, the regulation eliminates the opportunity for an applicant who has been denied a disability benefit to receive a benefit through an exceptions hearing.

Impact on Budget

The regulations may minimally reduce State pension contributions to the State Retirement and Pension System, as explained above. There is no effect on the State capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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