



**Milwaukee County Employees' Retirement System (ERS)
April 18, 2022 Disability Workgroup Meeting
OVERVIEW**

Workgroup Members:

Melinda Lawrence
Mitch Kreitzman
David Robles
LaKesha Pettigrew

Others Present:

Erika Bronikowski, Retirement Plan Services
Attorney Jessica Culotti, Reinhart Boerner Van Deuren s.c.
Attorney Judd Taback, Office of Corporation Counsel

1. Meeting goals, Welcome, Introductions

Ms. Bronikowski opened the meeting and explained that this meeting's goals are to discuss questions on Accidental Disability Retirement benefit design. At its last meeting, the Workgroup discussed questions related to disability retirement appeals. An overview of the prior meeting was circulated to Workgroup members for reference.

The goal for this meeting was to review recommendations drafted for the proposed revised disability retirement appeal process and have a discussion on Accidental Disability Retirement benefit design. Then the Workgroup will continue with other issues. At the end of the list, the Workgroup will recap and fine-tune the recommendations for submission to the Pension Board.

2. Review of Prior Meeting Discussions

After discussion with Counsel, it was determined that the Disability Retirement Workgroup meetings may be subject to Wisconsin open meeting laws. A review of the prior seven meetings was read for the record:

Meeting 1: Overview of Disability Retirement Benefits

Meeting 2: Overview of Benefits Offered to Disabled Employees of Milwaukee County

Meeting 3: Questions Related to Disability Retirement Applications

Question 1: Can a member receive an ADR for a disabling condition that was not disclosed on their original application form?

Recommendation: Recommend revisions to Pension Board Rules 1027 and 714 to require that (1) an individual applying for an ADR file a first report of injury at work, (2) the disabling condition on the application is reasonably similar to the worker's compensation reports, (3) the application won't be denied if a member fails to disclose the specific disabling condition, and (4) include language that if the medical board determines that there is an underlying injury or condition that is directly related to the event/accident that resulted in the termination of the individual, the application shall be deemed to include the medical condition determined by the medical review organization.

Meeting 4: Questions Related to Disability Retirement Applications (cont'd)

Question 2: Can anyone apply for an ERS disability pension (e.g., deferred vested, individuals currently earning OBRA service credit, former members who are not vested)?

Recommendation:

Employment Status	Vesting Status	ERS Service Credit	Apply for Disability?
Terminated	Not Vested	Cancelled	No
Active but not reached Normal Retirement Age	Vested	Earning	Yes

Active but not reached Normal Retirement Age	Not Vested	Earning	Yes
Active and reached Normal Retirement Age	Vested	Earning	No
Active and reached retirement eligibility but not Normal Retirement Age	Vested	Earning	Yes
Retired and reached Normal Retirement Age	Vested	Retired	No
Retired and not reached Normal Retirement Age	Vested	Retired	Yes
Terminated	Not Vested	Available	Yes
OBRA Member	N/A	N/A	No
Active employee not covered by ERS or OBRA	N/A	N/A	No

A Pension Board Rule will be drafted that sets a deadline for submitting a disability retirement application. The deadline will be one year from the later of: the actual termination date or the date the termination is determined (so a retroactive termination will have a deadline one year after the decision to terminate is finalized, not the actual date of termination).

Meeting 5: Questions Related to Disability Retirement Evaluation

Question 1: Members who are deputy sheriffs are held to the "own job" standard while other members are held to the "any job" standard. Should these be aligned?

Recommendation: This item will be added to a running list of possible actionable items that will be considered at the end of the Workgroup's work. This will allow for solutions to be considered in coordination with other solutions and not piecemeal.

Meeting 6: Questions Related to Disability Retirement Evaluation (cont'd)

Question 2: Member provides medical records and may only provide beneficial information. Members may redact/exclude any medical information that does not support their disability application. Should requirements be put in place to prevent this?

Recommendation: On physician's report, ask whether that physician is aware of whether this individual is being treated by other physicians either currently or in the past.

Question 3: Can a member apply for disability while still employed if the standard requires "termination due to disability"? What standards should the Board use to determine whether the member was terminated due to disability? How do accommodations that can be made by the County factor in?

Recommendation: This item will be added to a running list of possible actionable items that will be considered at the end of the Workgroup's work. This will allow for solutions to be considered in coordination with other solutions and not piecemeal.

Question 4: Need to address State law assumptions and work those into evaluation process

Recommendation: Counsel will prepare an ordinance amendment to present to the plan sponsor. RPS is aware of these assumptions and will administer them accordingly, but they have not yet arisen.

Questions Related to Approval/Payment Commencement

Question 1: Should disability retirement dates be effective the first of month like normal retirement?

Recommendation: This is addressed in Milwaukee County Ordinance Chapter 201.24 (2.19).

Meeting 7: Questions Related to Disability Retirement Appeals

Question 1: Should the disability appeal process be similar to benefit appeals (e.g., should RPS make initial decision on application with information from Medical Board)?

Recommendation: Determine if a Pension Board Rule change is sufficient to change the Disability Retirement appeal process. Then draft disability retirement appeal process that mirrors the standard appeal process where RPS makes the determination and appeals go to the Pension Board.

Question 2: If a member would like to appeal an adverse determination regarding the disability retirement application, what time limit (if any) should there be on the appeal process?

Recommendation: Obsolete under revised disability retirement appeal process.

Question 3: If the Pension Board continues to use a hearing examiner, should a panel of hearing examiners be used and, if so, how many individuals should be on that panel?

Recommendation: Obsolete under revised disability retirement appeal process.

Question 4: Should the disability appeal process or timeline be revised? The Board needs to meet within 20 days of a decision by the hearing examiner, which is tough to adhere to with the new Board schedule.

Recommendation: Obsolete under revised disability retirement appeal process.

3. Questions Related to Disability Retirement Appeals

The proposed revised disability retirement appeal process was reviewed and discussed.

The proposed disability retirement appeal process is as follows:

1. Member submits disability retirement application;
2. RPS compiles documentation from member's physicians and any worker's compensation claims and submits to ERS' medical review board;
3. If member has already separated from employment, RPS requests the reason for employment termination from the member's department and Human Resources business partner;
4. The medical review board provides the certificates regarding disability retirement eligibility based on their physical/psychological/vocational evaluation;
5. RPS reviews the certificates from the medical review board as well as the explanation for termination from Human Resources and makes a determination regarding the disability retirement application in accordance with the Ordinances and Rules;
6. The approval or denial by RPS is provided, in writing, to the claimant;
7. If the claimant disagrees with the determination made by RPS, they may submit an appeal request and will continue with a process similar to the non-disability appeal process in Rule 1016 (NOTE: to comply with the Ordinances, there may be slight deviations from the non-disability appeal process, such as time frames. The Pension Board can revise Rule 1016 or create a separate Rule to explain the process for disability appeals).

Discussion: Currently, disability retirement appeals could go before the Pension Board twice. The proposed modified process would eliminate redundancy.

Recommendation: This item will be added to a running list of possible actionable items that will be considered at the end of the Workgroup's work. This will allow for solutions to be considered in coordination with other solutions and not piecemeal.

4. Questions Related to Amount of Accidental Disability Retirement Benefit

Question 1: The Accidental Disability Retirement benefit is more generous than a full career of work. Should this be revised?

Discussion: Currently, the Accidental Disability Retirement benefit paid to employees who are members of the MDSA is 75% of their Final Average Salary and all other employees are eligible for 60% of their Final Average Salary. Given that MDSA members are earning a 2% multiplier and all other employees are earning a 1.6% multiplier, it would take 37.5 years to earn a normal pension benefit that is paid at the same rate as an Accidental Disability Retirement benefit.

The normal retirement benefit multipliers changed for MDSA members in 1995 and for all employees around 2012. Historically, those two groups had a multiplier of 2.5% and 2.0%, respectively. At that rate, it would take 30 years to earn a normal retirement benefit that would pay at the same rate as an ADR benefit. When the normal retirement multipliers were changed, the ADR rates were not changed.

Keep in mind that members may have ongoing medical expenses to deal with as a result of their disabling condition.

What is the actual experience of ADR occurrence in the ERS? What are other systems doing?

Question 2: ADR Overhaul - ADR is often considered a generous benefit that is essentially available to any non-retired member of the retirement system. ADR may be unnecessary due to other benefits offered.

Discussion: Milwaukee County offers a variety of benefits for employees who are injured or disabled including job accommodation/relocation programs, light duty assignments, remote work opportunities, Worker's Compensation, Short- and Long-Term Disability Benefits, FMLA, and a sick time allotment of up to 900 hours. Additionally, members who are vested and stop working will receive a pension at retirement age.

5. Questions Related to Worker's Compensation Offset

Question 1: Disputed v. Conceded Worker's Comp - If Worker's Comp has disputed a member's claim, is a different approach necessary? Submit medical documentation to MMRO and specify as to why the Worker's Comp claim is being disputed. Have the member obtain their own medical records if the claim is disputed?

Discussion: an example and explanation from Worker's Compensation on this item was requested.

6. Closure

Ms. Bronikowski noted that at the next meeting, the Workgroup will continue addressing the following issues:

- Worker's Compensation Offset
 - o *Disputed v. Conceded Worker's Comp - If Worker's Comp has disputed a member's claim, is a different approach necessary? Submit medical documentation to MMRO and specify as to why the Worker's Comp claim is being disputed. Have the member obtain their own medical records if the claim is disputed?*
- Re-Examinations
 - o *Re-Examinations Under New Standard - Can members who were approved for an ADR under the old "any job" standard be re-examined under the new standard?*
 - o *Layoff/recall list – if a member recovers, they are supposed to be put on the layoff/recall list which is not in use. We need another solution for members who have recovered from their disabling condition.*