

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)

105 KAR 1:220. Periodic disability review.

RELATES TO: KRS 16.577, 16.583, 16.645, 61.592, 61.600, 61.610, 61.615, 61.630, 61.637, 61.559, 61.597, 61.665, 78.545, 78.5510, 78.5512, 78.5514, 78.5516, 78.5522, 78.5524, 78.5526, 78.5528, 78.5540

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate all administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.610, 61.615, 78.5526, and 78.5528 provide for the employment and medical review of a recipient of a disability retirement allowance to determine if the recipient's disability retirement allowance should be continued or discontinued. This administrative regulation establishes the process for employment and medical reviews.

Section 1. Definitions.

- (1) "Approved employment" means work in any capacity found by the agency to not require the same, similar, or greater duties, residual functional capacity, or physical exertion as the position from which the recipient was found disabled.
- (2) "Effective retirement date" means the date upon which a member's disability, early, or normal retirement benefits began, whichever occurs first.
- (3) "Employer" means a person, agency, company, organization, or other entity that directs or leads a recipient's work, whether or not for pay.
- (4) "Trial basis" means a period of time not to exceed nine (9) months during which a recipient works in a non-approved employment position to allow him or her time to determine if he or she is able to maintain employment; employment during this time period will not affect the recipient's disability retirement.

Section 2. Use of Third-party Vendors.

- (1) The agency may contract with third-party vendors to act on its behalf throughout the disability retirement application and review process. The agency may also contract with third-party vendors to act on its behalf throughout the periodic review, reinstatement review, and employment review processes.
- (2) The agency may utilize independent, licensed physicians provided by third-party vendors to serve as medical examiners pursuant to KRS 61.665 and 78.545. Third-party vendors may provide additional persons to fulfill non-physician roles throughout the disability retirement application, periodic review, reinstatement review, and employment review processes.
- (3) Third-party vendors may act on behalf of the agency and the systems with all the rights and responsibilities therein.

Section 3. Periodic Review.

- (1) A recipient of a disability retirement allowance shall have a periodic review of his or her disability status pursuant to KRS 61.610 and 78.5526.
- (2)
 - (a) When provided by the agency and in accordance with KRS 61.610 and 78.5526, recipients shall complete:
 1. Form 8101, Employment and Medical Staff Review Certification;

2. Form 8525, Informed Consent and Authorization: Disability Retirement Applications and Reviews, All Plans; and

3. Form 8130, Disability Retiree Employment Reporting, for each of the following that is applicable:

a. The recipient is currently gainfully employed; or

b. The recipient has gainful employment not previously reported since his or her disability retirement benefits began or since his or her last employment review.

(b)

1. Recipients shall file with the agency or its third-party vendor the completed forms indicated in paragraph (a) of this subsection, and all relevant medical and employment information, by the end of day 180 calendar days from the day the Form 8101, Employment and Medical Staff Review Certification, is mailed to the recipient's address on file at the retirement office.

2. If the last day of the 180 day time period is a Saturday, Sunday, or state or federal holiday, then the submission shall be valid if filed with the agency or its third-party vendor by the end of day on the next business day following the weekend or holiday.

(3) If the recipient fails to complete the requirements of subsection (2) of this section, his or her disability retirement benefits shall be discontinued on the first day of the month following the expiration of the 180 day time period.

(4) If the recipient completes the requirements of subsection (2) of this section, the agency or its third-party vendor shall:

(a) Review and evaluate the medical information and documentation submitted in accordance with Section 4 of this administrative regulation; and

(b) Review and evaluate the employment information and documentation submitted in accordance with Section 6 of this administrative regulation.

(5) A recipient who has reached his or her normal retirement age shall not be subject to a periodic review.

(6) A recipient's disability retirement status that is continued by the Teachers' Retirement System may exempt the retiree from the agency's periodic review.

Section 4. Periodic Medical Review.

(1)

(a) The medical examiner will evaluate the submitted medical information and documentation to determine whether the recipient continues to be disabled from the condition(s) for which he or she was initially granted disability retirement. The agency shall notify the recipient of the medical examiner's findings.

(b) If the medical examiner finds the documentation fails to provide evidence that the recipient continues to be disabled from the condition(s) for which he or she was initially granted disability retirement and recommends discontinuance of the disability retirement allowance, the notification shall include:

1. Form 8101, Employment and Medical Staff Review Certification; and

2. Form 8191, Authorization for Independent Medical or Psychological Examination and Release of Medical Information, if the medical examiner recommended an independent medical or psychological examination in accordance with KRS 61.665(2)(j) and 78.545 or KRS 61.665(3)(c) and 78.545.

(2)

(a) If the medical examiner recommended discontinuance of the disability retirement allowance, the recipient shall have sixty (60) calendar days from the date the notification in subsection (1) of this section is mailed to file with the agency or its third-party vendor one of the following:

1. The completed Form 8101, Employment and Medical Staff Review Certification, and additional supporting medical information;

2. The completed Form 8191, Authorization for Independent Medical or Psychological Examination and Release of Medical Information, if applicable; or
3. Request a formal hearing to appeal the findings in accordance with Section 8 of this administrative regulation.

(b) If, at the end of the prescribed time period, the agency or its third-party vendor does not have on file one of the options detailed in subparagraph (a), (b), or (c) of this paragraph, the recipient's disability retirement allowance shall be discontinued on the first day of the month following the expiration of the prescribed time period.

(3)

(a) If the recipient completes the requirements of subsection (2)(a)1. of this section, the medical examiner shall review and evaluate the additional supporting medical information.

(b) If the recipient completes the requirements of subsection (2)(a)2. of this section the agency shall administer the independent medical or psychological examination in accordance with Section 5 of this administrative regulation. The medical examiner shall review and evaluate the findings from the independent medical or psychological examination.

(c) Once the medical examiner completes his or her evaluation of the documentation provided from the completion of paragraph (a) or (b) of this subsection, the agency shall notify the recipient of the medical examiner's findings.

1. If the medical examiner finds the documentation fails to provide evidence that the recipient continues to be disabled from the condition(s) for which he or she was initially granted disability retirement and recommends discontinuance, the recipient shall have sixty (60) calendar days from the date the notification is mailed to request a formal hearing to appeal the findings in accordance with Section 8 of this administrative.

2. If the recipient fails to file an appeal within the prescribed time period, his or her retirement allowance shall be discontinued on the first day of the month following the expiration of the prescribed time period.

Section 5. Independent Medical or Psychological Examinations.

(1) If the recipient files the Form 8191, Authorization for Independent Medical or Psychological Examination and Release of Medical Information, with the agency or its third-party vendor in accordance with Section 2(2)(a)2. of this administrative regulation, then the agency shall notify the recipient in writing of the date, time, and location of the appointment. Records from the examination shall be used to complete the medical review in accordance with Section 4(3) of this administrative regulation.

(2)

(a) The agency shall reimburse the recipient for expenses associated with the medical or psychological examination in the same manner as prescribed in 105 KAR 1:210, Section 8.

(b) The recipient shall file at the retirement office a completed Form 8846, Travel Voucher for Independent Examination, within fifteen (15) calendar days of the date of the examination or evaluation in order to receive reimbursement for mileage, actual parking costs, and any actual bridge or highway toll charges as prescribed in 105 KAR 1:210, Section 8.

(3) Pursuant to KRS 61.615(3)(h) and 78.5528(3)(h), if the recipient fails or refuses to complete the scheduled medical or psychological examination, the system shall send a notice of discontinuance. The recipient shall have sixty (60) calendar days from the date of the notice to request a formal hearing to appeal the findings in accordance with Section 8 of this administrative regulation. If the recipient fails to file an appeal within the

prescribed time period, his or her retirement allowance shall be discontinued on the first day of the month following the expiration of the prescribed time period.

(4) If the recipient fails to appear at the medical or psychological examination, or cancel the appointment within the timeframes required in the notice of appointment, the recipient shall be responsible for payment of any charges associated with the medical or psychological examination.

Section 6. Employment Review.

(1) The agency may request financial information from other local, state, or federal agencies to determine if a recipient is gainfully employed.

(2) Recipients may at any time file with the agency or its third-party vendor a completed Form 8130, Disability Retiree Employment Reporting, to be reviewed for potential gainful employment. The agency or its third-party vendor shall complete an employment review in accordance with subsection (5) of this section. The anticipated start date of employment indicated on the Form 8130 shall be used to determine time period requirements indicated in subsection (5) of this section. If the start date of employment was unknown on the Form 8130 and at any time becomes known, or if there is a change to the date previously indicated, the recipient shall notify the agency in writing.

(3)

(a) Pursuant to KRS 61.615(1) and 78.5528(1), recipients of a disability retirement allowance shall notify the agency of any gainful employment. When gainful employment is reported to the agency outside of the periodic review, or if gainful employment is discovered by any other means, the agency shall provide the recipient with a Form 8130, Disability Retiree Employment Reporting. The recipient shall file the completed Form 8130 with the agency or its third-party vendor within sixty (60) calendar days of beginning any gainful employment. The agency or its third-party vendor shall use the completed Form 8130 to perform an employment review in accordance with subsection (5) of this section.

(b)

1. If the recipient does not file with the agency or its third-party vendor the Form 8130 or written notification that the employment has ceased within nine (9) months of the first date of employment, the agency shall have the authority to discontinue the disability retirement allowance.

2. If the agency determines the disability retirement allowance shall be discontinued, the agency shall send notification to the recipient, and he or she shall have sixty (60) calendar days from the date the notice is mailed to request a formal hearing to appeal the findings in accordance with Section 8 of this administrative regulation.

3. If the recipient fails to file an appeal within the prescribed time period, his or her retirement allowance shall be discontinued on the first day of the month following the expiration of the prescribed time period.

(4)

(a) During the periodic review, recipients shall complete Form 8101, Employment and Medical Staff Review Certification, indicating if he or she is gainfully employed or has any previously unreported gainful employment. When indicated, the recipient shall file with the agency or its third-party vendor a completed Form 8130, Disability Retiree Employment Reporting, for each of the following:

1. His or her current gainful employment; and

2. Any gainful employment not previously reported since his or her disability retirement benefits began, or since his or her last periodic review.

(b) The agency or its third-party vendor shall complete an employment review for all employment not previously approved in accordance with subsection (5) of this section.

(c) During the periodic medical review as prescribed in Section 4 of this administrative regulation, the agency or its third-party vendor shall consider the employment details when determining whether the recipient continues to be disabled from the condition(s) for which he or she was initially granted disability retirement, regardless of whether or not the employment was approved employment.

(5) When gainful employment is reported during or outside of the periodic review, or discovered by any other means, the agency or its third-party vendor shall complete an employment review in accordance with KRS 61.610, 61.615, 78.5526, and 78.5528. The reviewer will evaluate the Form 8130, Disability Retiree Employment Reporting, or any other employment information or documentation available to determine whether the position has similar duties or requires the same or greater physical exertion or functional capacity as the position from which the recipient was found disabled. The agency shall notify the recipient of the findings.

(a) If findings indicate that a recipient's employment is not approved employment, then pursuant to KRS 61.615(1) and 78.5528(1), the recipient may begin or continue the employment on a trial basis and the recipient's monthly retirement allowance shall continue during the trial basis. The recipient's monthly retirement allowance shall cease effective the month following the end of the trial basis unless within sixty (60) calendar days of the date the notice is mailed, one (1) of the following occurs:

1. The recipient requests a formal hearing to appeal the recommendation in accordance with Section 8 of this administrative regulation;

2. The recipient files with the agency or its third-party vendor additional supporting employment information. The agency or agency's third-party vendor shall review and evaluate the additional employment information, and shall notify the recipient of the findings. If the findings indicate the employment is not approved employment, the recipient will have sixty (60) calendar days from the date the notification is mailed to request a formal hearing to appeal the findings in accordance with Section 8 of this administrative regulation; or

3. The recipient files a written notice with the agency or its third-party vendor in one (1) of the following ways:

a. If the recipient has not yet begun the employment, a written notification with the agency that he or she has elected not to start the employment; or

b. If the recipient begins or continues the employment on a trial basis, prior to the conclusion of the trial basis a written notification that he or she has ceased the employment.

(b) If the recipient fails to file an appeal within the prescribed time period, his or her retirement allowance shall be discontinued on the first day of the month following the end of the trial basis, or upon the expiration of the sixty (60) day time period, whichever occurs later.

(6) Retired members who are reemployed with a participating employer, shall also be subject to the requirements of KRS 61.637, 78.5540, and 105 KAR 1:390.

Section 7. Reinstatement Review.

(1)

(a) A recipient whose disability retirement allowance has been discontinued for any reason other than death is eligible to apply for reinstatement and be reevaluated by the agency or the agency's third-party vendor until his or her normal retirement age. The recipient shall submit new objective medical evidence that was not previously considered with his or her application for reinstatement.

(b) A recipient whose disability retirement allowance was discontinued based upon the employment review findings as prescribed in Section 6 of this administrative regulation shall also provide:

1. Employer documentation detailing changes not previously considered that have occurred in his or her position if he or she is still employed in the same position; or
 2. Written notification that he or she has ceased the employment that includes the date employment ceased.
- (2) Pursuant to KRS 61.615(6)(d) and 78.5528(6)(d), a recipient is only eligible for reinstatement for the same bodily injuries, mental illnesses, diseases, or conditions for which he or she was originally approved for disability benefits. A recipient cannot be reinstated for bodily injuries, mental illnesses, diseases, or conditions for which he or she was not approved for disability, or that occurred or became known after his or her last day of paid employment prior to the original retirement date.
- (3) A recipient shall apply for reinstatement by filing all of the following:
- (a) A completed Form 8102, Employment and Medical Staff Review Certification Reinstatement;
 - (b) A completed Form 8525, Informed Consent and Authorization: Disability Retirement Applications and Reviews;
 - (c) New objective medical evidence not previously considered;
 - (d) If filing for reinstatement in accordance with subsection (1)(b) of this section, not previously considered employer documentation detailing changes in the position, or written notification that the employment has ceased that includes the last date of employment; and
 - (e) If there is any new or previously unreported employment, a completed Form 8130, Disability Retiree Employment Reporting.
- (4) Reinstatement reviews shall be conducted in accordance with KRS 61.615(6)(d) and 78.5528(6)(d), considering only those conditions for which the recipient was granted disability.
- (5) If the agency or the agency's third-party vendor does not recommend reinstatement of a recipient's disability retirement benefits, the recipient may request a formal hearing to appeal the findings in accordance with Section 8 of this administrative regulation.

Section 8. Right to Appeal.

- (1) Any recipient whose disability benefits have been reduced, discontinued, or denied reinstatement may file an appeal of the findings at the retirement office with a written request for a formal hearing within sixty (60) calendar days of the date the notification of discontinuance was mailed. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) The written request for a formal hearing shall include a short and plain statement of the reason the determination is being contested.
- (3)
 - (a) The hearing officer presiding over an administrative hearing may allow the appellant to introduce, among other evidence, the determination of other state and federal agencies, such as the Kentucky Department of Workers' Claims and the Social Security Administration, approving the applicant for benefits only when accompanied by underlying objective medical evidence or vocational evidence.
 - (b) The hearing officer presiding over an administrative hearing shall consider only objective medical evidence and vocational records contained within or that accompany a determination by another state or federal agency.
 - (c) The hearing officer presiding over an administrative hearing shall not consider or be bound by factual or legal findings of other state or federal agencies.
 - (d) Written statements from medical providers within the administrative record shall not themselves be objective medical evidence, but may be relied upon if accompanied by, and reviewed in concert with, other supporting objective medical evidence.

(4) During the pendency of an appeal, the recipient shall continue to receive his or her disability retirement benefit.

(5) At the conclusion of the appeal, recipients shall be notified of the final order of the Administrative Appeals Committee (AAC) in accordance with KRS 61.615(3)(g) and 78.5528(3)(g).

(a)

1. If the AAC orders that the disability retirement allowance shall be discontinued, then it shall be discontinued on the first day of the month following the date of the notification except as provided in subparagraph 2. of this paragraph.

2. If the recipient's disability retirement allowance is discontinued due to the AAC determination that employment was not approved employment, the effective date of discontinuance shall be the first day of the month following the end of the nine (9) month trial basis or the first day of the month following the date of the notification of the AAC order, whichever occurs later.

(b)

1. If the recipient fails to notify the agency of gainful employment in accordance with Section 6(3) or (4) of this administrative regulation, then AAC shall have the authority to decide the period for which the agency shall recover any disability retirement allowance payments, health insurance premiums, or both. The earliest date of the period shall not be earlier than the first day of the month following the end of the nine (9) month trial basis.

2. If the agency recovers the disability retirement allowance payments, health insurance premiums paid, or both, it shall be from the recipient or the estate of the recipient only.

Section 9. Benefits Available After Discontinuance of a Disability Retirement Allowance.

(1) A member with a participation date on or after January 1, 2014 in one (1) or more of the Systems whose disability retirement allowance is discontinued pursuant to KRS 61.615 and 78.5528:

(a) Shall begin receiving retirement benefits for which he or she qualifies, if eligible.

(b) Shall not be eligible for early retirement benefits.

(2) A member with a participation date prior to January 1, 2014 in one (1) or more of the Systems whose disability retirement allowance is discontinued pursuant to KRS 61.615 and 78.5528:

(a) Shall begin receiving normal retirement benefits, if eligible.

(b) If not eligible for normal retirement benefits, shall be given the option to begin receiving early retirement benefits, if eligible.

(3) A member who received a disability retirement allowance shall have established an effective retirement date and, accordingly, shall not be eligible to request a refund of any remaining accumulated account balance if the member's disability retirement allowance is discontinued pursuant to KRS 61.615 and 78.5528.

Section 10. Recipient's Death During the Periodic Review Process.

(1) If the recipient dies during the periodic review process, the member's beneficiary may be entitled to receive disability retirement benefits pursuant to KRS 61.630, 78.545(6) and 105 KAR 1:240.

(2) If a recipient dies after the date of discontinuance as enumerated in Section 3, 4, 5, or 6 of this administrative regulation, the disability retirement allowance shall remain discontinued and there will be no ongoing disability benefit paid to a beneficiary. This shall not affect any other benefits to which the beneficiary may be entitled.

(3) The beneficiary shall not be permitted to apply for reinstatement on behalf of the decedent.

Section 11. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) Form 8101, "Employment and Medical Staff Review Certification", February 2023;
 - (b) Form 8102, "Employment and Medical Staff Review Certification Reinstatement", February 2023;
 - (c) Form 8130, "Disability Retiree Employment Reporting", February 2023;
 - (d) Form 8191, "Authorization for Independent Medical or Psychological Examination and Release of Medical Information", April 2023;
 - (e) Form 8525, "Informed Consent and Authorization: Disability Retirement Applications and Reviews, All Plans", February 2023; and
 - (f) Form 8846, "Travel Voucher for Independent Examination", May 2008.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the agency Web site at ky-ret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: April 27, 2023

FILED WITH LRC: May 2, 2023 at 10:15 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing to allow for public comments on this administrative regulation shall be held on Thursday, July 27, 2023, at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

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