

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amended After Comments)

105 KAR 1:215. Administrative hearing.

RELATES TO: KRS 13B.010-13B.170, 16.505-16.652, 61.510-61.705, 78.510-78.852

STATUTORY AUTHORITY: KRS 61.505(1)(g)~~[61.645(9)(e)]~~

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 16.510 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. ~~[KRS 61.645(9)(e) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852.]~~ KRS 61.645(16) and 78.782(16) provide~~[provides]~~ that an affected person aggrieved by a decision of the agency~~[system]~~, which is not a determination relating to disability retirement benefits, or an employer that is required to pay additional actuarial costs pursuant to KRS 61.598 and 78.545, may have the right to request an administrative hearing prior to the filing of an appeal in court. KRS 61.615(3), 61.665(3), 78.545 and 78.5528(3) provide that an affected person whose disability retirement benefits have been denied, reduced, discontinued, or denied for reinstatement may have the right to request an administrative hearing prior to filing of an appeal in court. This administrative regulation establishes the administrative appeal procedures.

Section 1. Definitions. ~~[Definition.]~~

(1) "Administrative hearing" or "hearing" is defined by KRS 13B.010(2).

(2) "Administrative record" means the official record of hearing as defined by KRS 13B.130.

(3) "Affected person" means a member, retired member, beneficiary, or recipient~~[as defined in KRS 16.505, 61.510 and 78.510].~~

(4) "Agency portal" means an online portal which stores and tracks relevant information related to an administrative hearing held in accordance with KRS Chapter 13B, including:

(a) The evidentiary record;

(b) Notices of scheduled pretrial conferences, status conferences, or hearings; and

(c) Reports, findings, briefs, position statements, reply position statements, exceptions, and orders.

(5) "Authorized agency staff" means employees of the agency who are approved parties to access the agency portal.

(6) "Briefing order" means an order issued by the hearing officer that provides deadlines for the parties to file any of the following:

(a) Position statements and reply position statements; or

(b) Briefs containing procedural, factual, or legal arguments.

(7) "Claimant" means an affected person who has filed an appeal due to a substantial impairment or an employer that is required to pay additional actuarial costs pursuant to KRS 61.598 and 78.545, and whose matter is still pending at the administrative or appellate court levels.

(8) "Entry of appearance" means a written statement filed at the retirement office attesting that a claimant is represented by an attorney in an administrative hearing process held in accordance with KRS Chapter 13B.

(9) "Evidentiary record" means all evidence, including video recordings of the administrative hearing, received and considered by the agency pertaining to a specific claimant's administrative hearing held in accordance with KRS Chapter 13B.

(10) "Final order" is defined by KRS 13B.010(6).

(11) "Hearing officer" is defined by KRS 13B.010(7).

(12) **"Informal settlement" means a submission to the agency by either party that will conclude a request for an administrative hearing prior to the hearing process being initiated.**

(13) "Party" is defined by KRS 13B.010(3).

(14) ~~(13)~~ "Position statement" means a written statement each party may file to explain his or her arguments of fact and law based upon the evidentiary record and applicable statutory and case law.

(15) ~~(14)~~ "Recommended order" is defined by KRS 13B.010(5).

(16) ~~(15)~~ "Reply position statement" means a written statement each party may file to explain his or her rebuttal arguments of fact and law that address the factual and legal arguments in the opposing party's position statement.

(17) ~~(16)~~ "Substantially impair" means:

(a)

1. The denial, discontinuance, or reduction of an affected person's benefits;

2. The final determination by the agency that an affected person must repay overpaid benefits; or

3. The final determination by the agency that the affected person is not exempt from the reduction of creditable compensation in accordance with KRS 61.598 and 78.545; and

(b) Does not include calculation methodology found in KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, and KAR Title 105.

Section 2. Agency Portal.

(1) The agency shall provide a unique method for approved parties to access the administrative record, including hearing recordings, memorandums, and any other relevant documentation related to administrative hearings held in accordance with KRS Chapter 13B for the matter in which they are directly involved, in the agency portal.

Access shall be granted to the following:

(a) Members of the Administrative Appeals Committee (AAC) or Disability Appeals Committee (DAC) as applicable;

(b) The claimant or the claimant's attorney;

(c) The hearing officer assigned to the matter; and

(d) Authorized agency staff.

(2) If a request for an administrative hearing in accordance with Section 5 of this administrative regulation is received by the agency, the agency shall notify the claimant or the claimant's attorney, as indicated on the request or entry of appearance, of the use of the agency portal for administrative hearings. The notice shall include details concerning:

(a) The use of the affected person's personal email, or his or her attorney's email, and how to provide or update that email for access to the agency portal; and

(b) How to request an exemption from use of the agency portal in accordance with Section 3 of this administrative regulation.

(3)

(a) The claimant or the claimant's attorney, the applicable hearing officer, and authorized agency staff shall receive notification when the following becomes available on the agency portal, as applicable:

1. The evidentiary record;

2. Additional documents when they are received and uploaded;

3. Details of scheduled ~~prehearing~~ ~~pretrial~~ conferences, status conferences, or hearings;

4. Any additional information related to the administrative record as it becomes available;

5. Reports, findings, briefs, position statements, reply position statements, exceptions and orders; and

6. Video recordings of the administrative hearing.

(b)

1. The agency shall provide notification to the claimant, or the claimant's attorney, detailing how to file and view documentation for inclusion in the evidentiary record and any other relevant documentation related to administrative hearings held in accordance with KRS Chapter 13B, such as motions, briefs, and exceptions.

2. Documentation shall be filed through mail, electronic mail, in-person delivery, or fax as provided in the notice, and shall be considered in compliance with KRS 13B.080(2).

(4) AAC or DAC members shall receive notification when the evidentiary record is ready for review in the agency portal.

Section 3. Agency Portal Use Exemption.

(1)

(a) A claimant may be exempt from use of the agency portal only if he or she files a completed request in accordance with subsection (2) of this section and meets one of the following criteria:

1. The claimant does not have internet access;

2. The claimant does not have access to a computer, smart phone, or tablet capable of allowing him or her to adequately use the agency portal; or

3. The claimant has an impairment or disability that limits his or her ability to use electronic communications.

(b) There is no agency portal use exemption available for hearing officers, DAC or AAC members, authorized agency staff, or attorneys.

(2)

(a) To request an agency portal use exemption, the claimant shall complete and file a valid Form 2940, Agency Portal Exemption.

(b) Once a valid Form 2940 is on file with the agency, the affected person shall only be granted access to the agency portal if he or she completes and files a new valid Form 2940 electing to withdraw the previously filed exemption request and provides a valid email address.

(c) The last valid Form 2940 on file with the agency shall control whether the affected person has access to the agency portal.

(3) Once the valid Form 2940, Agency Portal Exemption, is processed, the claimant shall receive the administrative record, including hearing recordings, memorandums, and any other relevant documentation related to administrative hearings held in accordance with KRS Chapter 13B for the matter in which he or she is directly involved, via first-class mail, except when a different manner of distribution is required by KRS Chapter 13B.

Section 4. ~~Section 2.~~ Notification of the Right to Request an Administrative Hearing.

(1)

(a) If the agency issues a final determination~~[system takes action]~~ which substantially impairs an affected person's benefits or rights under KRS 16.505 to 16.652, 61.510 to 61.705 or 78.510 to 78.852, except as provided in subsection (2) of this section~~[action which relates to entitlement to disability benefits]~~, the agency~~[system]~~ shall notify the affected person of the opportunity to request an administrative hearing by the end of

day thirty (30) calendar days from the date of the notice [a hearing]. The notification shall be contained in the notice of final determination. [action. An affected person may request a hearing by submitting the request in writing within thirty (30) days after the date of the notice of the opportunity to request a hearing. The request for hearing shall be filed with the executive director of the system at its office in Frankfort. The request for hearing shall contain a short and plain statement of the basis for request.]

(b) If the agency issues a final determination that an employer is required to pay additional actuarial costs pursuant to KRS 61.598 and 78.545, the agency shall notify the affected employer of the opportunity to request an administrative hearing by the end of day thirty (30) calendar days from the date of the notice. The notification shall be contained in the notice of the final determination.

(2)

(a) If the agency issues a final determination which denies an affected person disability retirement benefits, the agency shall notify the affected person of the opportunity to request an administrative hearing by the end of day 180 calendar days from the date of the notice as prescribed by KRS 61.665(2) and 78.545.

(b) If the agency issues a final determination which reduces or discontinues an affected person's disability retirement benefits, or which denies reinstatement of the affected person's disability retirement benefit, the agency shall notify the affected person of the opportunity to request an administrative hearing by the end of day sixty (60) calendar days from the date of the notice as prescribed by KRS 61.615(3) and 78.5528(3).

(c) The notification shall be contained in the notice of the final determination.

Section 5. [Section 3-] Request for an Administrative Hearing.

(1) All requests for an administrative hearing shall be in writing and shall include a short and plain statement of the basis for the request. The request shall be filed as provided in the notice of the right to appeal and within the timeframes prescribed in Section 4 of this administrative regulation.

(2) Failure of the affected person to request a formal hearing within the prescribed timeframes [period of time specified] shall preclude the affected person from requesting an administrative [a] hearing at a later time.

(3) An entry of appearance may be filed with the request for an administrative hearing or at any time during the administrative hearing process.

Section 6. Informal Settlements.

(1)

(a) Informal settlements pursuant to KRS 13B.070(3) may only be used if:

1. The issue(s) that prompted the administrative hearing has been resolved;
2. The agency has determined it will not take the agency action that resulted in the request for an administrative hearing; or
3. The claimant wishes to withdraw his, her, or its request for an administrative hearing.

(b) Informal settlements pursuant to KRS 13B.070(3) shall not be used other than as described in paragraph (a) of this subsection.

(2) The submission of an informal settlement pursuant to KRS 13B.070(3) shall be made by the party with the burden of proof under KRS 13B.090(7).

(3) An informal settlement pursuant to KRS 13B.070(3) shall be made in writing and filed with the agency. The informal settlement shall include:

(a) The claimant's or relevant member's first name, last name, and member ID or other personal identifying information; and

(b) A brief statement detailing the purpose of the informal settlement.

(4)

(a) An informal settlement pursuant to KRS 13B.070(3) may only be filed:

1. After a request for administrative hearing has been filed in compliance with Section 5 of this administrative regulation; and
2. Prior to the agency's distribution of an order scheduling the prehearing conference through the agency portal, as described in Section 2 of this administrative regulation, or by first-class mail.

(b) An informal settlement pursuant to KRS 13B.070(3) shall not be valid if:

1. Filed prior to a request for an administrative hearing as specified in Section 5 of this administrative regulation; or
2. Filed after the agency has distributed an order scheduling the prehearing conference.

(5)

(a) If an informal settlement is submitted that meets the qualifications established in subsections (1) through (4) of this section, the matter shall be considered resolved, and the agency shall notify both parties in writing that the matter has been resolved and the administrative hearing shall not proceed.

(b) The written notification in paragraph (a) of this subsection shall state that both parties shall have until the end of day fifteen (15) calendar days from the date the notification is provided to file a written objection to the notification that the administrative hearing shall not proceed.

(6)

(a) If a written objection is filed by the end of day on the 15th calendar day as provided in subsection (5)(b) of this section, the administrative hearing requested shall proceed.

(b) If a written objection is not filed by the end of day on the 15th calendar day as provided in subsection (5)(b) of this section, the administrative hearing requested shall not proceed, and the matter shall not be appealable.

(7) Nothing in this section shall prevent the parties from engaging in formal settlements and agreements to present to the hearing officer in accordance with Section 9 of this administrative regulation.

Section 7. ~~Section 6.~~ ~~Section 4.~~ Prehearing Conference.

(1) The prehearing conference shall be held telephonically. The agency shall provide notice to the affected person or his or her attorney of the date, time, and instructions for providing a phone number. ~~[The system may, either through review of its records or conference with the affected person, recommend a favorable determination prior to scheduling a hearing. Upon notification of a favorable determination, the affected person may withdraw the hearing request or request that the hearing be scheduled.]~~

(2) The prehearing conference shall be initiated by agency staff and shall be presided over by the hearing officer in accordance with KRS 13B.070. During the prehearing conference, the parties shall prepare stipulations, clarify the issues to be decided, request issuance of subpoenas and orders, and address other matters that will promote the orderly and prompt conduct of the hearing. ~~[The hearing officer may request a prehearing conference or may consider new evidence not already part of the affected person's file. The prehearing conference is an informal procedure, presided over by the hearing officer. Every effort shall be made by all parties to dispose of controversies, to narrow and define issues, and to facilitate prompt settlement of the claim.]~~

(3) If at the conclusion of the prehearing conference either party needs time to submit additional documentation, the hearing officer shall schedule a status conference for follow up ~~[the parties have not reached an agreement on all the issues, the hearing officer shall schedule a hearing to be held within a reasonable time].~~

(4) If at the conclusion of the prehearing conference all documentation is submitted and all parties agree to proceed, an administrative hearing shall be scheduled. ~~[If the parties~~

~~agree upon a settlement after the prehearing conference but before the hearing, the settlement agreement shall be filed with the hearing officer. The hearing shall be cancelled and notice of the cancellation shall be served on all parties.]~~

Section 8. ~~Section 7.~~ Status Conference.

- (1) If held, a status conference shall be held telephonically. The agency shall provide notice to the affected person or his or her attorney of the date, time, and instructions for providing a phone number for the status conference.
- (2) A status conferences may be held to discuss any outstanding issues or documentation from the prehearing conference or a previous status conference.
- (3) Additional status conferences may be held until pending issues are resolved and the parties agree to proceed with the administrative hearing.
- (4) A post administrative hearing status conference may be held to follow up on cases put on hold for further records in accordance with Section 10(5) of this administrative regulation.

Section 9. ~~Section 8.~~ Agreed Orders and Motions to Dismiss.

- (1) If at any time both parties agree to a settlement on the issue of the pending administrative appeal, a settlement agreement may occur through either an Agreed Order or a Motion to Dismiss filed with the hearing officer.
- (2) Pursuant to KRS 13B.080(6), a Motion to Dismiss may be filed with the hearing officer if:
 - (a) The claimant or agency fails to appear at more than one (1) pre-hearing or status conference, and if the agency fails to reschedule or the claimant fails to contact the agency to reschedule, within fourteen (14) calendar days of the second missed conference;
 - (b) The claimant or agency fails to participate in any stage of the hearing process, or fails to comply with an order of the hearing officer; or
 - (c) The claimant decides to discontinue his or her appeal for any reason.
- (3) The hearing officer may complete a Recommended Order of Dismissal in accordance with Section 13 of this administrative regulation based on the settlement agreement or Motion to Dismiss filed with him or her in accordance with subsection (1) and (2) of this section.

Section 10. ~~Section 9.~~ Notice of Administrative Hearing. The agency shall notify the affected person of the date, time, and location of the administrative hearing in accordance with KRS 13B.050(2). The notice shall provide the details about the hearing required by KRS 13B.050(3).

Section 11. ~~Section 10.~~ Administrative Hearing.

- (1) Administrative hearings shall be held at the retirement office in Frankfort or by secure video teleconference.
- (2) Administrative hearings shall be conducted in accordance with KRS 13B.010-13B.170. Evidence, testimony, motions, and objections may be introduced during the administrative hearing, and shall be accurately and completely recorded by the agency. The hearing officer may issue subpoenas in accordance with KRS 13B.080(3).
- (3) The hearing officer presiding over an administrative hearing shall not be bound by factual or legal findings of other state or federal agencies.
- (4) Decisions in administrative hearings shall be based on a preponderance of evidence in the record as it relates to the substantial impairment. The party's burden of proof shall be assigned as established in KRS 13B.090(7).
 - (a) For determinations pursuant to KRS 61.598(2), the agency shall bear the burden of proof to show the propriety of the agency's final determination that the member's

creditable compensation should be reduced and that no exception as set forth in KRS 61.598(4) applies.

(b) For determinations pursuant to KRS 61.598(5), the employer shall bear the burden of proof to show that the increase in the employee's creditable compensation was the result of a bona fide promotion or career advancement.

(5)

(a) The hearing officer may place the case on hold to allow either party additional time to submit further evidence discussed at the hearing. If this occurs, a deadline to file the additional evidence shall be provided by the hearing officer.

(b) The hearing officer may schedule a status conference to follow up on cases held for further evidence.

Section 12. ~~Section 11.~~ Close of Evidentiary Record.

(1) The hearing officer shall close the evidentiary record once all evidence has been filed.

(2) After the evidentiary record has been closed, the hearing officer or DAC/AAC may order the evidentiary record reopened for the submission of additional evidence.

Section 13. ~~Section 12.~~ Briefing Order.

(1)

(a) After the close of the evidentiary record, each party shall have the opportunity to simultaneously file Position Statements. The parties shall further have the opportunity to simultaneously file a Reply Position Statement to the other party's Position Statement.

(b) The hearing officer shall issue a Briefing Order that details deadlines for filing each of the following:

1. Position Statements;

2. Reply Position Statements; and

3. The Recommended Order, the due date for which shall not exceed sixty (60) calendar days from the deadline for the Reply Position Statements.

(2) The hearing officer shall take the Position Statements and Reply Position Statements provided in accordance with subsection (1) of this section into consideration when completing the Recommended Order in accordance with Section 13 of this administrative regulation.

Section 14. ~~Section 13.~~ ~~Section 5.~~ Recommended Order.

(1)

(a) The hearing officer shall submit a Recommended Order to the board that contains a recitation of the evidence, the appropriate findings of fact, and conclusions of law.

(b) The hearing officer's findings of fact and conclusions of law shall be based upon the evidentiary record as a whole.

(c) The hearing officer's findings of fact shall include a finding concerning the credibility of each witness whose testimony is included in the evidentiary record. ~~[The hearing officer shall make a report and a recommended order to the board. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. The hearing officer shall mail postage prepaid, a copy of his report and recommended order to all parties. The parties may file exceptions to the report and recommended order. There shall be no other or further submissions.]~~

(2)

(a) The agency's Executive Director of the Office of Benefits shall approve or deny hearing officer requests for an extension time to file his or her Recommended Order.

(b) If any extension of time is granted for a hearing officer to complete his or her Recommended Order, the agency shall notify the claimant or his or her legal representative when the extension is granted. Each extension shall not exceed thirty

(30) calendar days. The hearing officer may request multiple extensions in the same administrative case.

(3) A copy of the hearing officer's Recommended Order shall :

(a) Be mailed by first-class U.S. mail ; or ~~, if permitted by law,~~

(b) Electronically. ~~electronically~~ mailed through the agency portal to any party that provides written consent ~~to all parties~~ .

(4) Each party may file written exceptions to the Recommended Order detailing any issue the party has with the Recommended Order no later than the end of day fifteen (15) calendar days from the date the Recommended Order was mailed by first class U.S. mail or, if permitted by law, electronically mailed through the agency portal.

Section 15. ~~Section 14.~~ ~~Section 6.~~ Board Findings.

(1) The DAC and AAC shall have the authority to act upon the Recommended Order on behalf of the board pursuant to this section and in accordance with KRS 13B.120, 61.615, 61.645, 61.665, 78.545, 78.5528, and 78.782. ~~The board shall consider an act on the recommended order in accordance with KRS 13B.120.~~

(2)

(a) The DAC or AAC shall have ninety (90) calendar days from the date of the Recommended Order to provide a Final Order of the board.

(b) A Final Order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.

(c) The DAC or AAC shall act in accordance with KRS 13B.120 regarding the Recommended Order.

Section 16. ~~Section 15.~~ ~~Section 7.~~ Notification of Findings.

(1) All parties shall be provided with the Final Order of the board.

(2)

(a) The Final Order of the board shall be provided to the claimant or his or her legal representative by certified mail in accordance with KRS 13B.120. The agency shall immediately enter the fact of mailing in the record.

(b) Service by certified mail is complete upon delivery of the envelope. The return receipt shall be proof of the time, place, and manner of service. The agency shall document and file the return receipt when it is received.

(c) If the envelope is returned with an endorsement showing failure of delivery, that fact shall be documented in the record, and the returned envelope shall be filed in the record. The agency shall make at least one (1) additional attempt to provide the Final Order of the board to the affected person or his or her legal representative by certified mail documenting and filing the outcome in accordance with this subsection. ~~The system shall mail the final decision of the board to the affected person or his legal representative. If any extension of time is granted by the board for a hearing officer to complete his report, the system shall notify the affected person or his legal representative when the extension is granted.~~

~~[Section 8.] [A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.]~~

~~[Section 9.] [Formal hearings shall be held at the system's office in Frankfort unless another location is determined by the hearing officer.]~~

~~[Section 10.] [All requests for a hearing pursuant to this section shall be made in writing.]~~

~~[Section 11.] [The board may establish an appeals committee whose members shall be appointed by the chairman and who shall have the authority to act upon the~~

~~recommendations and reports of the hearing officer pursuant to this section on behalf of the board.]~~

Section 17. ~~Section 16.~~ Supplemental Copies of an Administrative Record.

(1) A claimant, or his or her attorney, may request a supplemental paper copy of all or part of the administrative record at a rate of ten (10) cents per page, cost of postage, and staff time to process the request consistent with KRS 61.874, if the claimant, or his or her attorney:

- (a) Originally received a paper copy of the administrative record;
- (b) Met an exemption to receive a paper copy of the administrative record under Section 3 of this administrative regulation; or
- (c) No longer has access to the agency portal.

(2) The claimant, or his or her attorney, may request a supplemental copy of all or part of the administrative record on an approved data storage device. Supplemental copies shall be provided at the following rates, if the claimant, or his or her attorney met one of the requirements identified in subsection (1)(a)-(c) of this section:

- (a) Ten (10) dollars for each approved data storage device;
- (b) Cost of postage; and
- (c) Staff time to process the request consistent with KRS 61.874.

(3)

(a) The supplemental copy of the administrative record shall not be mailed or otherwise provided to the claimant, or his or her attorney, until the applicable fees described in subsection (1) or (2) of this section are paid in full.

(b) The agency shall provide the amount of the cost for the applicable supplemental copy in accordance with subsection (1) or (2) of this section to the claimant, or his or her attorney.

(c) Payment for the supplemental copy shall be made by check or money order for the full amount owed and made payable to the Kentucky State Treasurer. The payment shall be mailed or delivered in-person to the retirement office.

Section 18. ~~Section 17.~~ ~~Section 12.~~ Judicial Review. Any affected person aggrieved by a Final Order~~[final order]~~ of the board may seek judicial review after all administrative appeals have been exhausted by filing suit in the Franklin Circuit Court within the time period prescribed in KRS 13B.140.

~~[Section 13.] [Any proposed order or order shall be served by one (1) of the following methods:]~~

~~[(1)] [The system may place a copy of the document to be served in an envelope, and address the envelope to the affected person to be served at the address of the affected person existing in the system files or at the address set forth in written instructions furnished by the affected person or his legal representative. The system shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The system shall immediately enter the fact of mailing in the record and make entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The system shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope. The return receipt shall be proof of the time, place, and manner of service.]~~

~~[(2)] [The system may cause the document, with necessary copies, to be transferred for service to any person authorized by the board or by any statute or rule to deliver them, who shall serve the documents, and the endorsed return shall be proof of the time and manner of service.]~~

~~[(3)] [The methods of service specified in this section shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.]~~

Section 19. ~~Section 18.~~ Incorporation by Reference.

(1) Form 2940, "Agency Portal Exemption", updated June 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 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 kyret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 5, 2024 at 2:15 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the administrative appeal procedures for an affected person whose retirement benefits have been denied, reduced, or discontinued.

(b) The necessity of this administrative regulation:

This amended administrative regulation is necessary in order to include policy and procedures that were not found in the previous version, and to require the use of the agency portal except when an affected individual meets an exemption.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

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 Employee Retirement System that are consistent with KRS 16.510 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.645(16) and 78.782(16) provide that an affected person aggrieved by a decision of the system, which is not a determination relating to disability retirement benefits, may have the right to request an administrative hearing prior to the filing of an appeal in court. KRS 61.615(3), 61.665(3), 78.545 and 78.5528(3) provide that an affected person whose disability retirement benefits have been denied, reduced, or discontinued may have the right to request an administrative hearing prior to filing of an appeal in court.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This amended administrative regulation will allow KPPA to effectively administer administrative hearings through an electronic agency portal, and for affected individuals to have a clear set of procedures.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amended administrative regulation adds procedures that were not found in the previous version and details on the use and requirements of the agency portal.

(b) The necessity of the amendment to this administrative regulation:

This amended administrative regulation is necessary in order to include policy and procedures that were not found in the previous version, and to require the use of the agency portal except when an affected individual meets an exemption.

(c) How the amendment conforms to the content of the authorizing statutes:

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 Employee Retirement System that are consistent with KRS 16.510 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.645(16) and 78.782(16) provide that an affected person aggrieved by a decision of the system, which is not a determination relating to disability retirement benefits, may have the right to request an administrative hearing prior to the filing of an appeal in court. KRS 61.615(3), 61.665(3), 78.545 and 78.5528(3) provide that an affected person whose disability

retirement benefits have been denied, reduced, or discontinued may have the right to request an administrative hearing prior to filing of an appeal in court.

(d) How the amendment will assist in the effective administration of the statutes:

This amended administrative regulation will assist in the effective administration of KRS 61.615(3), 61.645(16), 61.665(3), 78.545, 78.5528(3), and 78.782(16) by detailing the administrative appeals process and procedures, and by providing the requirements for the agency portal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation does not affect businesses, organizations, or state and local governments except for the KPPA. It is unknown how many individuals this administrative regulation affects because it is unknown how many individuals will file an appeal in the future.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

KPPA already has the agency portal built and in use. KPPA is already in compliance with this amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The reduction of paper and cost of mailing. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

Minimal.

(b) On a continuing basis:

Minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees of funding will not be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation establishes fees for requested supplemental copies of an administrative record in certain instances.

(9) TIERING: Is tiering applied?

Tiering is not applied.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

None except KPPA.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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 Employee Retirement System that are consistent with KRS 16.510 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None.

(c) How much will it cost to administer this program for the first year?

Minimal.

(d) How much will it cost to administer this program for subsequent years?

Minimal.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):None.

Expenditures (+/-):None.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

Unknown.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

Unknown.

(c) How much will it cost the regulated entities for the first year?

Unknown.

(d) How much will it cost the regulated entities for subsequent years?

Unknown.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):Unknown.

Expenditures (+/-):Unknown.

Other Explanation:

This administrative regulation as amended allows for the KPPA to utilize an agency portal for electronic records and notifications to the affected persons, hearing officers, Administrative Appeals Committee, Disability Appeals Committee and internally, and therefore reduces the use of paper and cost of mailing documents.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010] This administrative regulation will not have a major economic impact.