

PERS Disability Retirement Benefits

Disability retirement benefits provide you with a secure income if you become permanently sick or injured while employed and can no longer perform the essential duties of your job. Disability retirement benefit options are the same as service retirement benefit options, except that disability retirees are not eligible for the Partial Lump Sum Option (PLSO). PERS offers two types of disability retirement benefits: non-duty-related and duty-related.

Non-Duty-Related Disability Retirement

To qualify for non-duty-related disability retirement, you must meet the vesting requirement for your Retirement Tier.

Members who apply for non-duty-related disability retirement will be in one of two plans:

- **Age-Limited Disability Plan** - Applicable to members employed before July 1, 1992, who did not elect the Tiered Disability Plan, and who have not received a refund of contributions since July 1, 1992 (See page 41 for details and calculator.)
- **Tiered Disability Plan** - Applicable to members employed before July 1, 1992, who elected the Tiered Disability Plan; offered as sole plan selection to new members employed on or after July 1, 1992 (See page 42 for details.)

Disability retirement coverage is not extended to any inactive member unless he or she is vested and can prove that the qualifying disability occurred within six months of termination and that the disability was a direct cause for termination of covered employment. If you are a vested inactive member and you return to covered employment and apply for non-duty-related disability retirement within six months, you must show that you were physically capable of performing the job when your employment began.

Duty-Related Disability Retirement

If you become disabled as a direct result of a physical injury sustained from an accident or a traumatic event caused by external violence or physical force occurring in the performance of job duties, you may be eligible for duty-related disability retirement. You are covered for this benefit from the first day of employment, regardless of your age or years of service. Duty-related disability retirement benefits are calculated at either 50 percent of average compensation (this portion is tax-exempt) or the non-duty-related disability retirement amount, whichever provides the higher benefit.

To Apply for Disability Retirement Benefits

To apply for either non-duty-related disability retirement or duty-related disability retirement, complete and file a Form 9A DSBL, *Pre-Application for Disability Retirement Benefits*, which may be found on the PERS website.

Once you have applied for disability benefits and before benefits may be granted, your employer must certify the duties of your job, whether alternative employment has been offered, and that all applicable requirements for reasonable accommodations under the Americans with Disabilities Act have been met.

If you become disabled before meeting your vesting requirement and your disability does not result from an accident or traumatic event occurring in the performance of your job duties, you may receive a refund of your contributions plus interest. File PERS Form 5, *Member Refund Application*, and, if applicable, PERS Form 5C, *Rollover Distribution Election*. PERS Form 5C is a part of the PERS Form 5 Series and is available on the PERS website.

PERS Medical Board

The PERS Medical Board is comprised of three medical doctors responsible for identifying specific, objective medical and employment evidence, as documented, to determine whether a permanent medical condition exists that prevents you from performing the duties of the job for which benefits are being claimed.

As an applicant for disability benefits, you must provide required medical documentation for review by the PERS Medical Board. This documentation includes copies of office notes from all treating physicians and copies of any discharge summaries from in-patient hospital treatment.

While the Medical Board gives consideration to a Social Security disability determination, the Board does not automatically accept that determination as sole evidence of eligibility for PERS disability benefits.

Continuing Qualification

If you are approved for disability benefits, you may be required to submit to medical examinations on a regular basis. If you are determined to no longer be qualified for disability benefits through either a medical evaluation or documented earnings ability, your disability benefits will be subject to termination by the PERS Board of Trustees.



Download PERS Form 5 Series and PERS Form 9A DSBL

The complete PERS Form 5 Series may be found at www.pers.state.ms.us and includes PERS Form 5, *Member Refund Application*, and PERS Form 5C, *Rollover Distribution Election*. You also may find PERS Form 9A DSBL, *Pre-Application for Disability Retirement Benefits*, online.

Income Restrictions

As a disability benefit recipient, you may work and earn no more than the difference between your average compensation before retirement and the benefit amount paid after retirement. This limitation applies to earned income only, not passive income such as interest income or Social Security income. You are required annually to submit copies of your income tax returns, Internal Revenue Service Form(s) 1040, and other supporting income earnings documents.



Service Retirement while Pursuing Disability

If eligible, you may begin receiving service retirement benefits while pursuing approval for disability retirement if you file PERS Form 6, *Disability Retirement Application*, which will be provided in your disability retirement packet after we receive your PERS Form 9A DSBL, *Pre-Application for Disability Retirement Benefits*. On Form 6, you will select your benefit payment option, designate your beneficiaries, and, if eligible, elect whether or not to receive service retirement while pursuing disability retirement. You are not eligible to select the PLSO if you are pursuing disability benefits. If you elect to receive service retirement while pursuing disability retirement and you are not approved for disability, you cannot change the option selected on your Form 6 except if you qualify to Pop-Up or Pop-Down. If you are approved for disability benefits and the benefits paid under service retirement are less than the benefits owed under the provisions of disability retirement, the difference will be paid to you.

Temporary Benefit while Pursuing Disability

If you have terminated covered employment and are not eligible for service retirement but have applied for disability retirement, you may apply for a temporary benefit while pursuing approval for disability retirement. If you are eligible for this temporary benefit, PERS will include the application in your disability retirement packet. All medical information and required PERS forms must be received before you are eligible to receive the temporary benefit.

The temporary benefit will be paid as partial distribution of your accumulated contributions and will equal no more than 50 percent of your accumulated contributions. You will receive six to 18 monthly installments, depending on your time frame selection. The monthly installments will be no more than one-half of the estimated monthly disability retirement allowance to which you would become entitled under the base retirement benefit option you select.

The temporary benefit will cease at the end of the pre-selected time frame or at the time a final disability determination is made, whichever occurs first. These payments will be recovered through an actuarial reduction of any future monthly benefits over your lifetime.

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MHSPRS Handbook Parts VII - VIII

Part VII: Disability Retirement

700. Disability Retirement Qualifications and Eligibility

Upon the application of an eligible member or his employer, disability benefits may be approved for payment by the PERS Board of Trustees. Such benefits must first be approved by the PERS Medical Board or other designated governmental or non-governmental disability determination service, after a medical examination necessary to certify the member is mentally or physically incapacitated for the further performance of duty and that such disability is likely to be permanent. The Disability Applicant must provide objective medical evidence for review by the Medical Board to support a permanent inability to perform the usual duties of employment or such lesser duties, if any, as the employer, in its discretion, may assign without material reduction in compensation, or the incapacity of a PERS member applying for benefits to perform the duties of any employment covered by PERS that is actually offered and is within the same general territorial work area, without material reduction in compensation. The employer is required to furnish a certification of the job duties as well as a statement as to whether the employer had offered the member other duties.

Approval by the Social Security Administration for disability benefits does not automatically entitle an applicant to PERS disability benefits. However, the PERS Medical Board may be presented with the same information provided to the Social Security Administration as well as documents from the Social Security Administration as to its decision for use in making a determination as to PERS disability benefit eligibility.

A member of the MHSPRS must have at least 10 years of membership service and be under age 55, and also not eligible for service retirement benefits in order to be eligible to apply for regular non-duty related disability retirement benefits.

701. Calculation of Disability Retirement Benefits

The annual non-duty related disability retirement allowance payable under the MHSPRS is equal to the greater of 50% of the Average Compensation for the two (2) years immediately preceding retirement, or the minimum benefit as follows:

greater or equal to 15 years of service = \$500/month

greater or equal to 10 years of service and less than 15 years = \$300/month

less than 10 years of service = \$250/month

702. Application Forms

A member should make application for disability retirement directly to the Public Employees' Retirement System or through their employer by requesting and completing a Request for Benefit Calculation Form. The Request for Benefit Calculation Form requires the employer to certify the projected effective date of retirement as well as projected wages, including lump sum leave payment, which will be received by the applicant from date of application through the effective date of retirement. Upon receipt of the request, the following forms shall be forwarded to the member:

1. Disability Retirement Application, to be completed by the member;
2. PERS FORM 6-B, Certification of Job Duties, to be completed by the employer;
3. PERS FORM 6BJ, Certification of Duty-Related Disability/Death, to be completed by the employer;

4. PERS FORM PSY-1, Certification of Competency, to be completed by the member's primary physician;
5. PERS FORM 7, Examining Physician's Statement, to be completed by the member's physician(s).

The member will be assigned to a Disability Benefit Analyst who will assist in the application process. An interview will be conducted to collect relevant information about the disability claim being filed. The applicant is responsible for submitting all relevant physicians' office notes, hospital admission/discharge summaries and any other current, detailed, and related medical information for use by the PERS Medical Board in determining the member's eligibility for disability benefits. If the member is claiming benefits under hurt-on-the-job provisions, a copy of a Workers' Compensation report, accident, incident or injury report relating to the on-the-job accident or traumatic event, which is being claimed to have resulted in a disabling condition, must be submitted by the member and/or agency for review by the Medical Board.

703. Options Under Disability Retirement

Upon application for disability retirement, any MHSPRS member may elect to receive the maximum benefit possible in a disability retirement allowance payable throughout life, or he or she may elect at the time to receive the actuarial equivalent of the disability retirement allowance in a reduced allowance taking into consideration benefits payable to a beneficiary. SPECIAL NOTE: The Social Security Leveling Option, Option 4-C, is not available to the disability benefit applicant.

704. Effective Date of Disability Retirement

The effective date of retirement shall be the first of the month after receipt of the completed application by PERS, but in no case before the date of termination from all covered employment.

705. Employment of Disability Retirees

If the Medical Board or other designated governmental agency reports and certifies to the Board of Trustees, after a comparable job analysis, that such disability retiree is engaged in, or is able to engage in, a gainful occupation paying more than the difference between his disability benefit and the Average Compensation, and if the Board of Trustees concurs in such report, the disability benefit shall be reduced to an amount which, together with the amount earnable by him, shall equal the amount of his Average Compensation determined at retirement. In the event that his earning capacity changes, the amount of the said benefit may be further modified, provided that the revised benefit shall not exceed the amount originally granted. A disability retiree restored to active service at a salary less than the Average Compensation shall not become a member of the retirement plan.

The disability law allows disability retirees to have other income. However, the amount of income which may be earned from outside sources, while continuing to receive disability benefits, is limited. A disability retiree can earn no more than the difference between his or her Average Compensation used in calculating disability benefits and the annual benefits received from the retirement plan. Disability retirees are required to submit copies of income tax returns to PERS each year to prove that their income is within the limit allowed by state law.

706. Eligibility of Member on Inactive Status for Disability Benefits

Inactive members of MHSPRS are not eligible to apply for disability benefits. There are no provisions for a member in inactive status to apply for disability benefits.

707. Retirement Allowance for Disability in the Line of Duty

A duty-related disability retirement allowance under the MHSPRS is payable to any member, regardless of the years of service credit, who has not attained age 55 and who, as certified by the PERS Medical Board, becomes permanently physically or mentally incapacitated for duty due to sickness or injury caused or sustained as a direct result of duty.

The disability retirement allowance shall be equal to 50 percent of the average compensation for the two (2) years immediately preceding his retirement.

Part VIII: Death Benefit Payments

800. Spouse and Dependant Children Payments

The retirement benefit payable on the account of members of the MHSPRS who die prior to retirement, whether or not the death is considered a line of duty death, is determined based upon the statutory provisions in effect as of the date of the member's death. In the event of non-duty related death before retirement, the spouse and dependent children of any member with five (5) or more years of contributing membership service may be entitled to a monthly benefit. A dependent child is defined as one who is under the age of 19 and unmarried (or up to age 23 if in school on a full time basis and unmarried.) In the event of death in the line of performance of duty, the member's spouse and dependent children may be entitled to a monthly benefit, regardless of the number of years of membership service credit.

Non-Duty Related Death Benefits The annual retirement allowance in the event to a non-duty related death of a member prior to retirement who has five or more years of contributing membership service credit is equal to 2.5% of the average compensation for each year of service credit with 50% of the benefit payable to a spouse until remarriage and 25% of such benefit payable to one dependent child, or 50% of the benefit payable to two or more dependent children.

801. Death Benefits If Killed in the Line of Duty

The annual retirement allowance in the case of a member of the MHSPRS who is killed on the job is equal to 50% of the average compensation payable to the spouse and 25% of the average compensation payable to one dependent child, with 50% of average compensation payable to two or more dependent children until age 19, or 23 if a full time student and unmarried. The spouse will continue to be eligible for spousal benefits until remarriage.

802. Spouse or Dependant Child Benefit Payments

The spouse or dependent child of a deceased member who qualifies for survivorship benefits must file an application for benefits by completing a Request for Benefit Calculation, available from the member's employer or by calling PERS. Documents needed by PERS prior to processing the claim include: proofs of birth of the member, spouse and/or dependent children, the member's death certificate, and the spouse must provide a copy of the marriage license.

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A Review of the Public Employees' Retirement System's Disability Determination Process

Executive Summary

Introduction

In response to a legislative request prompted by citizens' complaints of disability claims being unfairly denied, the PEER Committee conducted this review of the Public Employees' Retirement System's (PERS's) disability determination process. The purpose of the review was to determine:

- the legal authority and rationale for PERS's disability determinations;
- costs associated with PERS's disability determination process;
- how PERS's disability determination criteria and process compare to that used by the federal Social Security Administration (SSA) in making its disability determinations; and,
- whether it would be advisable for the state to rely on the Social Security Administration's determination of disability as the sole and final determinant of disability for members of PERS (as permitted under MISS. CODE ANN. Section 25-11-113 [1] [a] [1972]) in lieu of PERS making its own disability determinations.

Background

Determination of Disability Benefits under Mississippi's Public Employees' Retirement System

The Mississippi Public Employees' Retirement System is the retirement system for nearly all non-federal public employees in the state. Regular service retirement benefits are available to members with at least four years of membership service.

There is no length of service requirement for PERS members applying for duty-related disability. PERS members applying for a non-duty-related disability must have four years of credit in the state retirement system. For non-duty-related disability,

applicants (that were approved for benefits) are under the age-limited plan or the tiered plan. The plans differ in that mainly the age-limited plan applicants must be fifty-nine or younger to apply, and with the tiered plan there is no age limit.

Also, inactive applicants (i.e., those individuals who are no longer employed by the state) are eligible for disability benefits provided they have four years of credit in the system and can prove that the disability occurred within six months of termination of active service. The applicant must also have medical evidence to prove that the disability was the reason for withdrawal from state service.

State law provides three mechanisms for PERS in making initial disability determinations: determination by a medical board, determination by the Social Security Administration, or contracting with another governmental agency or non-governmental disability determination service to make disability determinations. The PERS Board currently requires all of its disability determinations to be made by a medical board composed of three physicians whose terms are not limited by state law or board policy.

Prior to 1995, PERS frequently accepted SSA certifications of disability in awarding disability benefits under PERS. According to PERS's Executive Director, PERS no longer accepts SSA certifications because PERS is not confident that SSA uses sufficient expertise of medical professionals in making its disability determinations. The PERS Executive Director also disagreed with SSA's inclusion of non-medically documented information in the decision making process (e.g., an applicant's description of pain).

For the period 1990 through 1994, when PERS accepted SSA certifications of disability as automatic proof for disability at PERS, the costs averaged \$38,266 per year. From 1995 through 2000, after PERS decided to no longer accept SSA certifications as automatic proof for the allowance of PERS disability, PERS spent an average of \$269,904 per year on disability determinations.

According to PERS, the cost to administer the disability program has increased because of increases in full-time staffing, the change in the number of physicians that review the disability cases, and the number of appeals that have been filed.

Determination of Disability Benefits under the Social Security Administration

The federal government provides benefits to disabled workers through the Social Security Administration. To become eligible for SSA disability benefits, the applicant must have worked a certain amount of time in a recent time frame and earned a specified minimum level of covered earnings.

Responsibility for SSA disability determinations is divided between the Social Security Administration, and under contract, the Office of Disability Determination Services (DDS) of Mississippi's Department of Rehabilitation Services.

The national average cost of processing an SSA disability case in FY 2000 was \$383. According to the Social Security Advisory Board, Mississippi's DDS has the lowest reported cost in the nation for processing a case (\$244 per case).

Comparison of PERS's and SSA's Disability Determination Criteria and Processes

The Exhibit, page x of this summary, compares basic elements of PERS's and SSA's disability determination criteria and processes. Overall, SSA's process for making disability determinations is the more objective of the two processes because it is based on detailed written criteria, procedures, and policy interpretations governing case disposition, whereas PERS's process has no written criteria, policies, or procedures governing how its physicians make disability determination decisions.

PERS and SSA differ in terms of how "inability to work" and permanence of the disability are defined. PERS has a less stringent "inability to work" requirement than SSA (i.e., inability to perform a similar job at similar pay under PERS versus inability to perform any job paying at least \$740 per month under SSA), but has a more stringent requirement regarding the permanence of the condition (i.e., permanent under PERS, versus ongoing for at least twelve months under SSA).

With respect to evidence, PERS and SSA use similar medical evidence in reaching their determinations, but differ in that SSA allows the admission of non-medical evidence--e.g., an applicant's statement of pain that is not substantiated by objective medical evidence. The SSA adjudicator then makes a finding on the credibility of the applicant's statements based on a consideration of the entire case record.

With regard to qualifications of adjudicators, PERS uses physicians to make its initial determinations and uses physicians to review all of its appeals. In contrast, under the SSA system, trained non-medical disability examiners initially review each applicant's file using detailed criteria. In complex cases, physicians assist in the initial review and in all cases, a physician reviews the work of the disability examiner before the initial determination decision is finalized.

Exhibit: Comparison of Determination Processes of PERS and SSA

	PERS	SSA
Definition of disability	condition must be permanent	condition must be expected to last at least one year or result in death
Inability to work	at the job retiring from or a similar job with similar pay	at any job earning at least \$740 per month
Length of service to qualify	4 years for non-duty-related disability (tiered and age-limited plans)	determined by work credits
	no service length requirement for duty-related disability	determined by work credits
Age to qualify	59 years or less for non-duty-related disability under age-limited plan but no age requirement under tiered plan	determined by work credits
	no age requirement for duty-related disability	determined by work credits
Qualifications of case reviewers	licensed medical doctors	disability examiners and licensed medical doctors
Type of evidence used in determination process	medical evidence	medical evidence and consideration of claimant's symptoms
Written criteria for determination process	none	SSA's Listing of Impairments and SSA's policy interpretations
Frequency of re-exams	annually for the first 5 years then once every 3 years	once a year if improvement expected and if unsure about improvement every 3 years and if no improvement expected every 7 years
Appellate levels	2 levels of appeal	4 levels of appeal
Average cost to make a determination (in FY 2000)	\$586	\$244 (in Mississippi)

SOURCE: PEER

Both PERS's and SSA's processes consist of the initial determination, re-examination, and appeals phases. However, in the second phase, frequency of re-exams differs between PERS and SSA. PERS requires disability recipients under the age of sixty to be re-examined each year during the first five years and once every three years thereafter. SSA requires disability recipients to be re-examined at least once every three years, unless the disabling condition is permanent. In the appeals phase, PERS provides one level of review before the appeals route to the court system, while SSA provides three levels of internal review of the decision.

Conclusions Regarding Whether PERS Should Rely on Social Security Administration Determinations to Establish Eligibility for Disability Benefits

In considering whether to rely on SSA determinations to establish eligibility for disability under PERS, the Legislature should consider several important issues, summarized below in question and answer format.

- Would all PERS members applying for disability benefits under PERS qualify to apply for disability benefits under SSA?

No.

- Do all PERS members applying for disability benefits also apply for disability benefits under SSA?

No.

- For those cases that have been considered by both PERS and SSA over the past eleven years, have the outcomes been similar?

No.

- How much would PERS save if SSA handled the disability determination function?

PERS would recognize minimal savings.

- Would determinations under SSA be more fair and uniform than under PERS?

Some subjectivity is inherent in the process of making disability determinations. The SSA's Advisory Board, in a recent report on its own disability program, stated that "the perception is that determinations of eligibility are not being made in a uniform and consistent manner." However, the SSA

system does have written criteria and formal rules and regulations.

- What changes would have to be made in state law in order to require PERS to accept SSA determinations?

The Legislature would have to amend state law to abolish adjudicatory and reexamining functions within PERS's disability program and delete references to interaction between the PERS Board, the Disability Appeals Committee, and the medical board. The Legislature would have to adopt the SSA's definition of "disability" and require that PERS disability applicants first apply with the SSA and that SSA's rules, policies, and procedures govern determinations for PERS.

- What would be the advantages of PERS's reliance on SSA disability determinations?

The advantages would be that PERS applicants would be adjudicated by written criteria, applicants would have access to more appeal stages, and that the duplication of having both state and federal determination processes would be eliminated.

- What would be the disadvantages of PERS's reliance on SSA disability determinations?

The primary disadvantage would be that the disability determination process could take longer than it presently does.

Options and Recommendations

Because both PERS's and SSA's disability determination processes have weaknesses, neither option (leaving the determination process at PERS or moving it to SSA) emerges as clearly superior in terms of yielding consistent, objective, and fair disability determinations. However, one could make an argument to leave the determination process at PERS because the Legislature can mandate and oversee implementation of improvements to PERS's process, while it cannot mandate and oversee changes to SSA's process. Further, moving the process to SSA would require adoption in state law of SSA's definition of disability, which is on paper a tougher standard to meet than the current definition of disability contained in state law.

The following options outline steps that should be taken under either option. Under Option 1, keeping the determination process at PERS, PEER has listed recommended steps that PERS should

take to increase the objectivity, fairness, and consistency of its disability determination process.

Under Option 2, moving the process to SSA, PEER recommends changes that the Legislature would have to make in state law to accomplish the move. Under this option, while PERS would discontinue its function of making disability determinations, it would continue to ensure that the applicant qualified to apply for disability benefits under state law and calculate and pay out the benefits due to the PERS member following a certification of disability by SSA.

Option 1: Keep the Disability Determination Process at PERS

If the Legislature chooses to keep the disability determination process at PERS, the agency should take the following actions.

1. PERS should develop written criteria for what constitutes a disabling condition, similar in detail to SSA's Listing of Impairments.
2. PERS should issue formal, written policy interpretations in response to questions/issues arising from implementation of the written criteria developed in response to Recommendation 1.
3. For each case that it considers, PERS should require its medical board to explain in writing the reason for its determination, in sufficient detail that an outside reviewer could understand the rationale for the decision.
4. PERS should develop a checklist of required medical tests for the types of disabling conditions contained in the listing discussed in Recommendation 1. PERS should require that results from the tests be placed in the applicant's file prior to the PERS medical board's consideration of the case.
5. PERS should provide ongoing training to its physicians on implementing specific policies and procedures for the disability determination process.
6. PERS should cease its practice of disclosing the estimated amount of an applicant's disability benefits to those who are making the disability determinations, as this information is irrelevant to a determination of disability and by its presence in the file could influence the outcome of the determination.

Option 2: Require PERS to Rely Totally on SSA's Disability Determinations

If the Legislature chooses to rely on the SSA's disability determinations, the Legislature should make the following changes in state law to reflect such.

7. The Legislature should amend MISSISSIPPI CODE ANNOTATED Sections 25-11-113, 25-11-119, and 25-11-120 to:
 - require that SSA disability determinations be accepted as the only form of proof of disability at PERS;
 - delete PERS's definition of disability and substitute SSA's definition of disability;
 - reflect that all policies, procedures, rules, and regulations of SSA will govern PERS's disability determinations;
 - require that all PERS disability applicants first apply for disability benefits at the SSA;
 - delete the adjudicatory functions of PERS (e.g., abolish the medical board and the Disability Appeals Committee, PERS Board of Trustees' powers relating to disability determinations);
 - have all reexaminations made by SSA rather than by PERS; and,
 - require that all administrative functions (e.g., determining PERS eligibility) relating to PERS's disability benefits program remain a responsibility of PERS.
8. In cases where applicants do not have Social Security coverage, PERS should contract with Disability Determination Services (DDS) to secure its services to perform disability determinations for PERS using DDS's criteria. Furthermore, the Legislature should enact legislation that provides that when any individual who is not a participant in Social Security coverage and seeks disability benefits from PERS through any procedure established by law and rule, that applicant should have a right to appeal any adverse administrative decision made by the SSA to the First Judicial District of Hinds County Circuit Court.