

Appeals

Guide to the Administrative Appeals Process



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maine **PERS**
Public Employees
Retirement System

mainepers.org

Guide to the Administrative Decision and Appeals Process

A general overview of
Maine Public Employees Retirement System's
administrative decision and appeals process.

A publication of
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The information in this handbook is intended to give you a general understanding of the Maine Public Employees Retirement System's administrative decision and appeals process. The contents are not the basis of any rights between MainePERS and any party, nor does this handbook provide all of the detail of the laws and rules that govern MainePERS membership and related rights. There are frequent changes to the statutes and rules relating to MainePERS, and the most recent law may not be reflected in this handbook. Before making a decision relating to your rights and benefits, you should review current law and consult with MainePERS staff and your own advisers.

This booklet is designed to assist you in understanding the Maine Public Employees Retirement System (“MainePERS” or “the System”) administrative decision and appeals process. The information is not intended to substitute for legal advice and/or the assistance of an attorney.

You are responsible for any expenses associated with hiring an attorney and any costs associated with witnesses whose attendance you require.

Chapter 702 of MainePERS rules governs the administrative decision and appeals process to the Board of Trustees of the Maine Public Employees Retirement System. You will find the rule on the Internet at:

www.maine.gov/sos/cec/rules/90/94/411/411c702.doc

If you do not have access to the Internet, you may request a paper copy by contacting MainePERS by telephone or in writing.

If you have questions about MainePERS administrative decision making and appeals process, please contact:

Maine Public Employees Retirement System
46 State House Station
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Tel: (207) 512-3100
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GENERAL INFORMATION

Administrative Decision Process

If MainePERS approves your requested action, you will be notified in writing.

If the System denies your requested action, for example, an application for Disability Retirement benefits, you will receive a “Decision of the Executive Director” from the Executive Director’s Designee. You will be given the right and instructions on how to appeal the adverse decision to the Board of Trustees. (See the “Appeals Process” section of this publication.)

Although there is no requirement that you be represented or advised by an attorney, the System encourages you to seek the advice of an attorney at any stage of your case. If you are unsure of where to turn for assistance, a list of some organizations that may be able to help is provided at the back of this booklet.

Appeals

Who Can Appeal?

A person whose legal rights, duties, or privileges are adversely affected by a “Decision of the Executive Director” issued by the Executive Director’s Designee can appeal the decision to the Board of Trustees. A person may represent him/herself or be represented by anyone of his or her choice, attorney or lay person.

How Do I Appeal?

To begin the appeal process, you must send a written statement of appeal to the Board of Trustees. Be specific in your letter about the Decision you are appealing. Your letter must also include your name, address, phone number and Social Security number. If your appeal also concerns another MainePERS participant, include his/her name and Social Security number, if you know it.

MainePERS does not accept appeals via e-mail.

Mail the appeal request to the following address, or fax it to the following number:

Board of Trustees
Maine Public Employees Retirement System
46 State House Station
Augusta, ME 04333-0046
Fax: 207-512-3282

MainePERS must receive your written notice of the appeal within 30 days from the date your Decision of the Executive Director was received. MainePERS cannot consider an appeal filed after 30 days.

What Are My Responsibilities During An Appeal?

It is your responsibility to participate in conferences and hearings in your appeal. If a scheduling conflict arises, you must notify the Appeals Clerk to request a change of schedule.

When you appeal, MainePERS will send you a packet of information referred to as the "Appeal Packet." This packet contains the information MainePERS considered in making the decision to deny your application or request. It becomes part of the record in your appeal.

If you fail to appear at a hearing, the hearing officer may determine that you have abandoned your appeal. You will then receive written notice regarding your absence. If within ten (10) business days you submit information which demonstrates, in the judgment of the hearing officer, that you had good cause for failure to appear, the appeal will be reinstated. If you do not respond within ten (10) days, the "Decision of the Executive Director" will become final on the 11th day.

Who Is Involved?

Appellant. You as the person bringing the appeal and/or your representative.

Board of Trustees. An eight-member group who makes the final agency decision on all appeals.

Board Counsel. An Assistant Attorney General available to advise the hearing officer and the Board of Trustees on matters of law during the appeal.

Executive Director. The person available to consult with and to provide advice to the Board of Trustees, the hearing officer and Board Counsel concerning relevant System policies, practices and procedures in connection with matters appealed to the Board of Trustees.

Executive Director's Designee. A member of MainePERS staff assigned to make certain decisions on behalf of the Executive Director.

Hearing Officer. An independent contractor (not an employee of the System) hired to conduct appeal proceedings. The hearing officer is a person with appropriate experience and/or training, whom the Board judges to be fair, impartial, unbiased, and able to conduct a fair, efficient and effective

appeal process. When MainePERS receives a statement of appeal in a timely manner, the System assigns the case to a hearing officer.

Medical Board. In Disability Appeals, a panel of three physicians available for consultation with the Executive Director's Designee, the staff of the System, the Board of Trustees and/or the hearing officer regarding an appellant's medical situation.

MainePERS Representative. An employee of the MainePERS who represents the System in an appeal.

System Advisor. The System employee designated to provide consultation and information to the hearing officer, the Board of Trustees and Board Counsel concerning the practices and procedures of the System.

The *Ex Parte* Communication Rule

Because the hearing officer must listen impartially to the evidence presented in your appeal, the hearing officer can only consider facts and arguments when all sides have the opportunity to be present. The hearing officer may not speak with one party about the case unless all parties are present. If you write to the hearing officer, you must also, at the same time, send a copy of your correspondence to the persons representing the other parties, for example, the MainePERS Representative.

Evidence

The hearing officer is responsible for issuing a fair and impartial recommended final decision to the Board of Trustees. The hearing officer reviews the basis for the appeal and all the relevant evidence considered by the Executive Director's Designee in making the Decision. Additional expert and lay person evidence can be introduced during the appeal process.

"Relevant evidence" is information which tends to prove or disprove an issue in the case and on which reasonable persons would rely, for example, medical records. The hearing officer also determines the weight to be given the evidence. The hearing officer may exclude information which is irrelevant or repetitious.

When all parties stipulate, or agree, to a fact, the hearing officer may make a finding of fact on the basis of the stipulation. Signed statements or on-the-record oral statements by parties are sufficient as stipulations.

Documents contained in the appeal record (including medical records) are by law public records and are generally not confidential under Maine law.

STEPS IN THE APPEAL PROCESS

1. Pre-Hearing Conference

The first step in the appeal process is the Pre-Hearing Conference. This is usually a telephone conference among you, your attorney or representative (if you have one), the MainePERS Representative, and the hearing officer. During the conference, the issues are listed by the hearing officer and a schedule is set for the filing of documents and for other events that will take place during the course of your appeal.

2. Notice to Other Parties

If an appeal involves a Participating Local District (PLD) employee, the System will notify the PLD of the appeal and of the fact that the PLD can elect to be a party to the appeal, in addition to MainePERS and the Appellant. MainePERS will also provide notice to parties whose legal rights, duties or privileges may adversely be affected by a Decision of the Executive Director's Designee.

3. Hearing

The hearing officer will schedule a hearing to take testimony from you and other lay and expert witnesses you or the System choose to have testify. All hearings are under oath and recorded by a court reporter, who prepares a record of the hearing.

4. Reconsideration by the Executive Director's Designee

Disability Appeal: After the hearing, the case goes back to the Executive Director's Designee for reconsideration. The Designee can decide to consult with the Medical Board again before issuing the reconsideration decision. The Designee may affirm the earlier decision, or reverse some or all of the earlier decision.

Non-Disability Appeal: After the hearing, the case goes back to the Executive Director's Designee for reconsideration. The Designee may affirm the earlier decision, or reverse some or all of the earlier decision.

5. Final Recommended Decision of the Hearing Officer

Following the hearing and the Executive Director's Designee's reconsideration decision, the hearing officer issues a final recommended decision. All the parties have an opportunity to read and comment on the hearing officer's report. The hearing officer will consider and address the comments of the parties and transmits the final recommended decision, which might include revisions made as a result of the comments of the parties, to the Board of Trustees.

6. Decision by the Board of Trustees

The Board of Trustees considers the hearing officer's final recommended decision at a regular monthly Board meeting.

The Board will notify you of the date and time of the meeting. The parties-- (you, your attorney or representative, and the MainePERS Representative)--can elect to make an oral or written statement in support of their positions. The Board may receive consultation and information at any time during the meeting from Board Counsel or the System Advisor. Pursuant to statute, the Board must accept the final recommended decision of the hearing officer unless it is not supported by the record as a whole, the retirement system is advised by the Attorney General that the hearing officer has made an error of law or the decision exceeds the authority or jurisdiction conferred upon the hearing officer.

FURTHER PROCEEDINGS

1. Reconsideration by the Board of Trustees

After the Board issues a final decision, a party may request the Board to reconsider its Decision before the 30-day appeal period has passed only if 1) new evidence exists that was impossible for the party to present earlier; or 2) to correct an error of law. The Board may choose to 1) reconsider the case and send the issues back to the hearing officer, 2) address the issues itself by taking additional evidence, or 3) deny the request for reconsideration.

2. Appeal to Superior Court

If you disagree with the Board's Decision, you can appeal to Superior Court within 30 days of the receipt of the Board's Decision.

3. Appeal to Law Court

If unsuccessful at Superior Court, the final step is an appeal to the Maine Supreme Judicial Court in the time frame and manner prescribed by law.

SOURCES FOR ADVICE AND/OR REPRESENTATION

Note: You are not required to have representation in an appeal. This list is provided to help you find representation if you want it.

AFSCME, Council 93

20 Winter Street

Augusta, ME 04330

Tel: (207) 622-6191

Web: www.afscmecouncil93.org/maine.html

Cumberland Legal Aid Clinic

University of Maine Law School

246 Deering Avenue

Portland, ME 04102

Tel: (207) 780-4370; Toll Free: 1-877-780-2522

Web: mainelaw.maine.edu/cumberlandlegal.aspx

Legal Services for the Elderly, Inc.

9 Green St., P.O. Box 2723

Augusta, ME 04338-2723

Tel: (207) 621-0087; Toll Free: 1-800-750-5353

Web: www.mainelse.org

Maine Education Association

35 Community Drive

Augusta, ME 04330

Tel: (207) 622-5866; Toll Free: 1-800-452-8709

Web: www.maine.nea.org

Maine School Management Association

49 Community Drive

P.O. Box 710

Augusta, ME 04332-0710

Tel: (207) 622-3473

Web: www.msmaweb.com

Maine State Bar Association

Lawyer Referral Service
124 State Street, P.O. Box 788
Augusta, ME 04338-0788
Tel: (207) 622-7523
Web: www.mainebar.org
E-mail: info@mainebar.org

Maine State Employees Association

65 State Street, P.O. Box 1072
Augusta, ME 04332-1072
Tel: (207) 622-3151; Toll Free: 1-800-452-8794
Web: www.mseaseiu.org

Volunteer Lawyers Project

88 Federal Street, P.O. Box 547
Portland, ME 04112
Tel: (207) 774-4348; Toll Free: 1-800-442-4293
Web: www.vlp.org
E-mail: contact@vlp.org

*Advice/representation can also be obtained through private attorneys.
Some of the organizations listed above may have some income
guidelines or limits for their services.*



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CONTACT US!



MainePERS
46 State House Station
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Main Line: (207) 512-3100
Toll-free: (800) 451-9800
Fax: (207) 512-3101

Office Hours
Monday through Friday from 8:00 a.m. to 5:00 p.m.,
with the exception of recognized holidays.