

## 94-411 MAINE STATE RETIREMENT SYSTEM

## Chapter 507 DETERMINATION OF INABILITY TO ENGAGE IN SUBSTANTIALLY GAINFUL ACTIVITY

SUMMARY: The purpose of this rule is to specify the standards and definitions to be applied in determining under 5 MRSA §§ 17907(2)(B), 17929(2)(B)(1), and 18507(2)(B) and 18529 (2) (B) (1) whether a disability retirement recipient is "unable to engage in any substantially gainful activity."

## 1. Standards and Related Definitions for Determination.

After the expiration of an initial period as specified by statute, disability benefit recipients continue to receive disability benefits only if they meet certain statutory requirements. One requirement is that the person be "unable to engage in any substantially gainful activity." The following standards govern the determination of a person's inability to engage in any substantially gainful activity under 5 MRSA §§ 17907(2)(B), 17929(2)(B)(1), and §§ 18507(2)(B) and 18529(2)(B)(1).

- A. A person shall be determined to be unable to engage in any substantially gainful activity if the person lacks the physical or mental capacity, due to the incapacity for which the person was awarded disability retirement benefits, to perform or participate in any activity or activities, tasks or efforts that are or could be performed in such a manner as to generate remuneration in an amount which is consistent with average final compensation.
- (1) For purposes of 5 MRSA §§ 17929(2)(B)(1), 18529(2)(B)(1) and this rule, "consistent with average final compensation" means an amount that, on an annual basis, is at least 80% of the person's average final compensation at retirement adjusted as if §17806 or §18407, whichever is appropriate, had been applicable.
  - (2) If inability to engage in any substantially gainful activity is being determined under §17907(2)(B) or §18507(2)(B), "substantially gainful activity" has the same meaning as "substantially gainful activity which is consistent with average final compensation as found in §17929(2)(B)(1) or §18529(2)(B)(1) respectively.
  - (3) Information about the labor market, including information contained in publications of the state and federal Departments of Labor, may be used when consideration of the nature of an employment activity or consideration of the salary level of a particular employment activity is needed. Such information on salary levels, if not current

at the time it is used, should be adjusted by the same inflation factor(s) applied to the disability recipient's average final compensation in subparagraph 1(A)(1) above.

- (4) The person is not unable to engage in any substantially gainful activity when the person is engaged in any activity or activities, whether or not remuneration-generating, that demonstrate an ability to engage in substantially gainful activity.
  - (5) The person is not unable to engage in any substantially gainful activity when the person has the physical or mental capacity to engage in any substantially gainful activity, regardless of whether or not the person does in fact so engage.
  - (6) If inability to engage in substantially gainful activity is being determined under 17929(2)(B)(1) or 18259(2)(B)(1), the person is not unable to engage in substantially gainful activity if an employer could make reasonable job modifications that would allow the person to engage in substantially gainful activity. "Job modification" means changes to any aspect of work that inhibits a person's ability due to physical or mental incapacity to perform the duties of a job including but not limited to modifications in the usual job tasks or duties, changes in the way a particular task or duty is usually carried out, changes to the physical environment, provision or allowed use of adaptive equipment and change in the job conditions.
- B. If inability to engage in substantially gainful activity is being determined under §17907(2)(B) or §18507(2)(B), the person must also be qualified by training, education or experience to perform the activities, tasks or efforts that comprise the activity or activities against which the person's inability is being evaluated.
- (1) "Qualified" means possessing, for purposes of meeting general requirements for employment, including self-employment or other gainful activity, either appropriate training in relevant skills and knowledge, including those that are transferable; or appropriate type and level of education; or appropriate experience.
  - (2) Such possession is established whenever there is a reasonable expectation that a person with this particular training, education or experience should be able to meet such general requirements.
- C. If the person's inability to engage in substantially gainful activity is being determined under §17929(2)(B)(1) or §18529(2)(B)(1), the activity or

activities against which the person's inability is being evaluated must be consistent with the person's training, education or experience.

- (1) "Consistent with" means that the activity or activities must bear a logical relationship to the person's previous training, education or experience.
- (2) Such a relationship is demonstrated by the possession of appropriate training in relevant skills and knowledge, including those that are transferable; or appropriate type and level of education; or appropriate experience.

## 2. Application of Standards.

- A. The recipient of disability benefits has the ultimate burden of demonstrating that s/he is unable to engage in substantially gainful activity and must make the demonstration of inability against the above standards.
- B. When a recipient of disability benefits has at any time since the effective date of disability retirement been engaged in any activity or activities that produces or has produced remuneration that is consistent with the person's average final compensation, a rebuttable presumption is established that all of the applicable standards set forth in Section 1 have been met.
- C. When a determination is made by the System that job modification would allow a recipient of disability benefits to engage in substantial gainful activity, the System has the initial burden to identify generally what types of job modifications would allow the member to engage in substantially gainful activity. This will be communicated in writing to the disability recipient prior to or at the time that a decision on the member's ability to engage in substantially gainful activity is made. The burden then shifts to the member disputing this determination to refute that such modifications would allow the person to engage in substantially gainful activity.

EFFECTIVE DATE OF EMERGENCY RULE: July 9, 1993

EFFECTIVE DATE OF PERMANENT RULE: September 28, 1993

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 5, 1996

NON-SUBSTANTIVE CORRECTIONS: October 3, 1996 - minor format and spelling.

AMENDED: June 7, 1997 - Section 1(A)((6)) and 2(C) added.