

Meeting Summary

MainePERS Consensus-Based Rulemaking

October 19, 2022, Meeting, 11:00 a.m. - 12:00 p.m., via Zoom

In attendance:

- Representative Group of Participants
 - Maine Education Association – Nate Williams
 - Maine Service Employees Association – Tom Feeley
 - Professional Fire Fighters of Maine – Michael Scott
 - Attorneys who Represent Appellants – Jerry Conley
- Interested Parties
 - Susan Hawes
- MainePERS Staff
 - Mike Colleran, Chief Operating Officer and General Counsel, Chair
 - Chip Gavin, Chief Services Officer
 - Kathy Morin, Director of Actuarial and Legislative Affairs
 - Annie Gregori, Associate General Counsel

Mike presented and explained the revised draft amended Rule 510 (Lump Sum Settlements). The group reached consensus on MainePERS moving forward with the draft.

Mike provided an overview of the additional information that had been provided on actively seeking work. He proposed that after 5-years in the program, a participant would be presumed to have not actively sought work, which could be rebutted by a showing that the failure to provide employment [at the substantially gainful activity level] was beyond the control of the participant. Group members commented that the limit seemed reasonable, making the presumption rebuttable was important, and the standard should be clear and objective. In response to a question about the impact on the current participants, Mike proposed that the 5-year period start for them when the rule amendment becomes effective [rather than when they entered the program]. The group agreed that MainePERS should provide draft amendment language next meeting to see if consensus could be reached.

Mike reintroduced the draft amended Rule 702 (Appeals) and proposed two changes to the draft: (1) instead of eliminating the hearing officer's authority to order independent medical examinations, limiting the authority to conditions that have not previously been subject to an IME; and (2) change "advise" to "inform" in the language about providing notice to the PLD or school unit employer on how to become a party. The group was okay with the draft with these changes, subject to discussion of the additional changes proposed by interested party Susan Hawes.

Mike reviewed Ms. Hawes's proposed changes and MainePERS' thoughts on them. MainePERS would:

- Include a 30-day limit on providing the appeals packet;
- Require use of Certified Mail for failure to appear notices but not for routine scheduling notices;
- Not change "shall" to "must" in the provisions identified;
- Not remove "medical" from Section 6(2)(b); and

- Add the word “the” in Section 9(4) as proposed.

The group was in general agreement with this approach. Mike asked if any of the members wanted discussion of any of the questions in Ms. Hawes’s document. Tom asked about question 4, and the group discussed employer participation in appeals. It was generally agreed that the current system, where employer interviews are routinely included and further employer information can be obtained voluntarily or through subpoena, was sufficient.

Mike agreed to make the further changes discussed above to the draft amended rule and bring it back next week for consensus.

Mike reviewed the draft disability retirement rule outline. Chip reported to the group on the approval of applications without full medical review where qualification is clear – nine applications approved in 18 days or less [since June of 2021]. Mike will bring a more advanced draft forward for the next meeting.

Mike reviewed the prior takeaways, which had all been completed.

Takeaways:

- MainePERS will provide a draft amended Rule 511 (ASW).
- MainePERS will provide a revised draft amended Rule 702 (Appeals).
- MainePERS will provide a more advanced draft disability retirement rule document.