

Meeting Summary

MainePERS Consensus-Based Rulemaking

November 29, 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 revisions to Sections 1 and 2 of draft Rule 506 (Disability Retirement) and new Section 3. He explained that Section 3 puts into rule a policy change made by MainePERS to limit reviews for continuing eligibility in most cases to one review, rather than reviewing most disability retirees every two years as permitted by statute. Mike also explained that Section 3 provides a right to an IME before a disability retiree is found to be no longer eligible unless the right is waived. Mike reviewed a submission from Susan Hawes regarding the draft and stated:

- MainePERS agreed with her suggestion to include a definition of “earnings” and presented the group with this suggested language: “Earnings” means wages from employment and non-wage net income received in return for labor, services or goods, such as received in self-employment. The group was generally receptive to this definition, but requested additional language specifically addressing rental real estate property. The group agreed that Mike will circulate proposed language by email and the group would respond with acceptance or suggested changes.
- MainePERS will consider the suggestion on annual statements of compensation for potential policy changes or future rulemaking, but was not inclined to make the suggested change in this rulemaking. Mike remarked that tax returns have been required for many years in order to confirm the amount of income received.
- MainePERS is not inclined to put in rule a requirement that the administrative summary be given to applicants and reviewees who have neither received an adverse decision nor requested a copy because it is not an appropriate subject for rulemaking.
- Mike explained that the draft rule does provide for the right to an IME before a determination of ineligibility on review even in those cases that involve the rebuttable presumption.
- There is no need to attempt to replicate the former provisions of Rule 202 (Medical Board) as the provisions were based on a different statutory scheme that no longer exists. The current statute and draft Rule 506 adequately address the role of the medical review service provider and IMEs.

Tom questioned the lack of burden of proof language in draft Rule 506’s reasonable accommodation provisions as compared to current Rule 509. Mike explained that the process in Rule 506 parallels that

of Rule 509, but that the burden of proof language was not carried forward because it seemed too legalistic for a non-adversarial process. Jerry said the language did not strike him as unfair or making things more difficult for the member. After further consideration and listening to the comments, Tom said he was okay with the language.

The group had no other comments or questions and reached consensus on MainePERS moving forward with rulemaking on draft Rule 506 and the repeal of Rules 507 (SGA) and 509 (Inability to Perform essential Functions) if Rule 506 is adopted. Mike explained that MainePERS was not proposing to amend Rule 512 (IMEs) as draft Rule 506 addresses IMEs on reviews for continuing eligibility.

The group had no further items to discuss. Mike indicated that this is the final meeting and thanked the group for their time, engagement, and input throughout this process.

Takeaway:

- MainePERS will circulate a proposed definition of “earnings” by the end of the day, and group members will respond with acceptance or suggested changes by the end of week if possible and in any case by the end of next week.