

Meeting Summary

MainePERS Consensus-Based Rulemaking

September 26, 2022, Meeting, 3:00-4:00 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
 - Kathy Morin, Director of Actuarial and Legislative Affairs
 - Annie Gregori, Associate General Counsel

After introductions, Mike Colleran reviewed the process of consensus-based rule development set forth in 5 M.R.S. § 8051-B, including that the agency retains discretion on whether to propose rules and the language of any proposed rules. He noted that MainePERS was conducting this process without funding or time constraints, although it would like to notice any resultant proposed rules in early November for formal rulemaking. He discussed the nature of rules. He presented proposed ground rules that had been sent to the group in advance. After discussion, the group tentatively approved the proposed ground rules, with final approval to be considered next meeting, although the ground rules may subsequently be re-opened.

Mike gave an overview of current MainePERS disability and appeals rules. He introduced some options for the group to consider. There was consensus on working to develop a disability retirement rule that would address all elements of eligibility for disability retirement, including definitions, and the subject matter of current Rule Chapters 507 (Substantially Gainful Activity) and 509 (Inability to Perform Essential Functions), which would be repealed. The rule would include reviews for continuing disability and would provide for the right to an Independent Medical Examination (“IME”) before MainePERS could determine that a disability retiree was no longer disabled on medical grounds unless waived. The group requested copies of significant disability decisions to help inform rule development.

The group agreed that it made sense to consider whether Rule Chapter 510 (Lump-Sum Settlements) should be updated, and asked MainePERS to provide information on any issues that have been experienced with the current rule. The group requested information from MainePERS on the Actively Seeking Work (“ASW”) rule, Chapter 511, specifically experience with members in the ASW program for a long time and how other states handle this issue.

The group supported amending Rule Chapter 512 (Independent Medical Examinations) to address eligibility reviews and considering changes to rule Chapter 702. Mike said that MainePERS legal had some ideas but needs to discuss those with the disability unit before bringing them forward.

The group scheduled future meetings for October 12, 19, and 26th from 11:00 a.m. – noon. Tom Feeley has a conflict on the 26th, but may be able to send a designee. He may also request cancellation.

Takeaways:

- MainePERS will draft a disability retirement rule document for discussion, which may be a draft rule or other document for issues to be discussed and decisions made.
- MainePERS will pull together and provide copies of court decisions, hearing officer decisions reversing MainePERS, and decisions frequently cited by Hearing Officers over the past two years. Jerry Conley will identify any additional decisions he thinks should be provided.
- MainePERS will identify any issues with the lump-sum settlement rule.
- MainePERS will gather and provide data on the ASW program, including what other states do.
- MainePERS will bring forward any proposals for amending Rule Chapter 702.