

February 29, 2024

Senator Michael Tipping, Senate Chair
Representative Amy Roeder, House Chair
Members, Joint Standing Committee on Labor and Housing
100 State House Station
Augusta, ME 04333-0100

Senator Tipping, Representative Roeder and Members of the Joint Standing Committee on Labor and Housing:

MainePERS is writing to provide you with an update on the implementation of disability retirement rules as you requested in your letter of July 24, 2023, along with additional information about the disability retirement program, including the most recent experience survey results and MainePERS' adoption of the Social Security Administration's Compassionate Allowance List.

Disability Program Rules

MainePERS conducted consensus-based rule development in 2022 on the rules pertaining to the disability retirement and appeals programs. A stakeholder group was convened to offer input and suggestions on the shaping of the rules. The participants included representatives from the Maine Education Association, Maine Service Employees Association, Professional Fire Fighters of Maine, and an attorney who has represented appellants in disability retirement cases. Multiple sessions were held during the late summer and early fall of 2022, concluding with a public hearing on January 23, 2023 and the adoption by the MainePERS Board of Trustees of new Rule Chapter 506 on February 9, 2023.

This new rule set forth the standards and processes for determining eligibility for disability retirement pursuant to statutory law at both the initial application stage and upon review for continued eligibility. It memorialized existing practices, addressed stakeholder concerns, adopted member-favorable changes, and incorporated the subjects of two existing rules to make the disability retirement process more transparent and understandable to all interested parties.

In conjunction with adopting Rule Chapter 506, existing Rule Chapters 507 and 509 were repealed due to the incorporation of their content into Rule Chapter 506, and three other rules were amended. The new and amended rules became effective on March 1, 2023. A copy of Rule Chapter 506 is attached as Appendix 1. Other MainePERS rules are available at <https://www.maine.gov/sos/cec/rules/90/chaps90-.htm>.

Following this rulemaking, departmental policy and practice documents were updated to reflect the impact of this rule on business processes, and staff were appropriately trained.

Member-centric changes formalized through the rulemaking include:

- Establishing a framework to implement the 2021 statutory change that requires offering an Independent Medical Examination (IME) prior to denying an application for disability retirement benefits on medical grounds. The rulemaking included an expanded right to an IME during appeals. In 2023, MainePERS facilitated IME examinations for seven applicants who completed the eligibility process. The examinations resulted in approval for two of those applicants. Prior to the addition of IME requirement, these applicants would have received an unfavorable decision.
- Adjusting the date a recipient undergoes a review for continuing eligibility to a full two years after the decision granting benefits is issued. The prior date of review was tied to last date at work and could mean a review initiated a year or less after benefit approval.
- Limiting reviews for continuing eligibility to one for most recipients, rather than routine reviews every two years as formerly required.
- Formally aligning MainePERS' definition of reasonable accommodation with ADA guidelines.
- Employing a holistic "whole person" approach when considering the interaction of multiple medical conditions on incapacity.

While the rulemaking formalized many long term practices, it also introduced new considerations that have effected positive change to the disability program. Most notable is the provision included in Rule Chapter 506 Section 2(2)(A) that states "if qualification is clear to a lay person, [the Chief Executive Officer] may grant benefits without the use of the medical review service provider." Historically, MainePERS' expedited processing of applications has been limited to terminal diagnoses, but this provision expanded the medical conditions appropriate for an accelerated processing time. In 2023, MainePERS offered approval to 21% of the applications filed (16 of 78) with advanced illness in an average of 28 days. This more than doubled the 9% of applications approved with expedited processing in 2022.

Other Disability Program Updates

In addition to the rulemaking update, there is additional information that may be of interest to the Committee regarding member experience with the disability retirement program.

A second annual survey of applicant experience was conducted in 2023. Those who had applied under the 2021 law and received a decision between September 10, 2022 (the closing date for the first survey) and June 30, 2023 (the end of the fiscal year) were invited to respond. Forty-four members met this criteria, and 55% of those responded to the survey. The survey results were generally positive, with 91.67% of respondents saying that they were treated with respect and 87.5% agreeing that the process was conducted fairly. Please see the enclosed Appendix 2 for the survey results and respondents' individual comments. MainePERS will continue to survey applicants on an annual basis. Survey results will be analyzed to inform future practice changes and the development of educational materials. The fiscal year will be used as the timeframe for this annual survey going forward.

On January 1, 2024, MainePERS streamlined the process of expediting applications through incorporation of the Compassionate Allowance List. This list, maintained by the Social Security Administration, identifies specific advanced and significant illnesses that are likely to meet eligibility criteria. MainePERS applicants with one or more condition listed on the Compassionate Allowance List are considered for expedited application processing. While applicants are still required to meet all of the same eligibility requirements as those whose conditions are not listed on the Compassionate Allowance List, applications can often be expedited using Rule Chapter 506 Section 2(2)(A) as previously described.

Further, MainePERS has also improved the disability retirement program information available on its website. Instead of housing information on a single page, website visitors are now invited to explore the disability program based on their individual needs. Those considering applying for benefits or who are currently in the application process are prompted to view the “Disability Applicant” section of the website, while those who currently receive benefits are directed to the “Disability Retiree” section. This change allows members and retirees to view the information most pertinent to their particular situation. The updates can be viewed directly at <https://www.mainebers.org/disability-retirement/>. MainePERS is exploring the development of informational videos in the future to further improve online content.

MainePERS welcomes this opportunity to update the Joint Standing Committee on Labor and Housing on its disability retirement program and continually seeks ways to improve the services available to our members. We welcome questions and are happy to address them as the Committee requests and in the format desired.

Respectfully submitted,


Dr. Rebecca M. Wyke
Chief Executive Officer

Enclosures

94-411 MAINE STATE RETIREMENT SYSTEM

Chapter 506: ELIGIBILITY FOR DISABILITY RETIREMENT BENEFITS

SUMMARY: This chapter sets forth the standards and processes for determining eligibility for disability retirement benefits.

SECTION 1. DEFINITIONS

1. **Consistent with the person’s training, education, or experience.** “Consistent with the person’s training, education, or experience” has the same meaning as “qualified by training, education or experience.” A member may be qualified by training, education, or experience to engage in an activity even if the member has not previously engaged in it or has not engaged in it for pay. The fact that the member may need additional training for a specific position does not mean that the position is inconsistent with the member’s training, education, or experience.
2. **Continuous creditable service.** “Continuous creditable service” means a period of membership service that occurs without any break in excess of 30 days. A period of leave under the federal Family Medical Leave Act where the member returned to the employment position at the end of the leave period does not constitute a break in membership service.
3. **Date of incapacity.** “Date of incapacity” means the date when a member stopped performing the essential functions of the member’s employment position due to functional limitations caused by a mental or physical condition.
4. **Earnings.** “Earnings” means wages from employment and non-wage net income received in return for labor or services, such as received in self-employment.
5. **Employment position.** “Employment position” means the position in which the member is employed at the time the member becomes incapacitated or a position that is made available to the member by the member's employer that is of comparable stature and equal or greater compensation and benefits and located within a reasonable commuting distance from the member’s residence.
6. **Existed before membership.** A condition “existed before membership” if, as of the member’s initial membership date, the condition:
 - A. Had been diagnosed by a health care provider;
 - B. Reasonably should have been diagnosed by a health care provider based on the member’s medical records and symptoms and the results of any additional tests the provider reasonably should have requested;
 - C. Had exhibited some, but not all signs and symptoms necessary for a diagnosis, but later manifested all such signs and symptoms and was diagnosed; or

- D. Was directly caused by another condition that was diagnosed or reasonably should have been diagnosed before membership.
7. **Incapacity.** “Incapacity” means unable to perform the essential functions of the member’s employment position with reasonable accommodation due to functional limitations caused by a mental or physical condition.
 8. **In service.** A member is “in service” if the member has not terminated employment and is receiving compensation for rendering services, including through the use of the member’s own accrued leave time.
 9. **Mental or physical condition.** A “mental or physical condition” is a condition affecting the member mentally or physically that is medically diagnosable.
 10. **Permanent.** “Permanent” means:
 - A. the incapacity is likely to continue for the foreseeable future;
 - B. the member has reasonably pursued appropriate treatment options; and
 - C. those treatment options have not resolved the incapacity.
 11. **Reasonable accommodation.** “Reasonable accommodation” has the same meaning as that phrase does under the federal Americans with Disabilities Act, 42 U.S.C. §12111(9).
 12. **Reasonable commuting distance.** “Reasonable commuting distance” means a distance of less than 60 miles that would be reasonable for the member to commute based on the facts and circumstances, including the cost of commuting, the compensation of the employment position, the member’s commuting history, and typical commuting distances where the member resides.
 13. **Substantially gainful activity.** “Substantially gainful activity” means any combination of activities, tasks, or efforts, with any reasonable accommodations, for which the member is qualified by training, education, or experience that would generate annual income in an amount in excess of the substantially gainful activity amount in the labor market for the member’s state of residence.
 14. **Substantially gainful activity amount.** “Substantially gainful activity amount” means \$20,000 or 80% of the member’s average final compensation, whichever is greater, adjusted by any cost of living adjustments required by statute or rule.

SECTION 2. INITIAL ELIGIBILITY

1. **Standards.** A member is eligible for disability retirement benefits if the member has a permanent incapacity while in service, subject to the following additional requirements where applicable:
 - A. If the member had less than five years of continuous creditable service as of the member’s last date in service, the incapacity must not result from a condition that existed before membership unless the incapacity has been caused or substantially aggravated by an injury or accident received in the line of duty from events or circumstances not usually encountered within the scope of the member’s employment.

(1) Events or circumstances are usually encountered within the scope of the member's employment if they are described in the job description for the member's position or are otherwise typically encountered one or more times during the career of a person in a position like the member's.

B. If at least two years have passed since the member's date of incapacity, the member must be unable to engage in any substantially gainful activity due to functional limitations caused by the mental or physical condition.

2. Use of the medical review service provider and independent medical examinations

A. The permanent incapacity may be revealed by an independent medical examination (IME), but the Chief Executive Officer may grant benefits without an IME and, if qualification is clear to a lay person, may grant benefits without use of the medical review service provider.

B. The Chief Executive Officer may deny benefits without use of the medical review service provider or an independent medical examination on non-medical grounds, including:

(1) The applicant was not in service at the time the applicant claims the incapacity began;

(2) The applicant is in an age-restricted plan and performed the essential functions of the employment position after normal retirement age;

(3) The claimed incapacity has existed for more than two years and the applicant has earned more than the substantially gainful activity amount in one or more years during this time;

(4) The applicant is uncooperative or unresponsive in providing essential information needed to process the application; or

(5) The applicant has already been denied benefits on the same condition and last date in service.

C. The Chief Executive Officer may not otherwise deny benefits without an IME unless the IME is waived by the applicant.

3. Determination of inability to perform the essential functions of the employment position with reasonable accommodation

A. A member is not unable to perform the essential functions of the employment position if the member could do so with one or more reasonable accommodations.

B. When a member is incapacitated by more than one mental or physical condition, any permanent functional limitations caused by the conditions will be considered in totality as part of a whole-person approach to determine whether the limitations make the member unable to perform the essential functions of the employment position with reasonable accommodation.

- C. If MainePERS determines that one or more reasonable accommodations would more likely than not allow a member to perform the essential functions of the employment position, MainePERS will communicate the reasonable accommodations in writing to the member and the employer prior to issuing a decision on eligibility for disability retirement, including, where applicable, a request to the employer that it provide the identified reasonable accommodations.
- (1) **Employer acceptance or refusal.** The employer shall inform MainePERS whether it will provide the requested reasonable accommodations. If the employer refuses because the member no longer is employed, the employer shall inform MainePERS whether the employer offered or would have provided the reasonable accommodations if requested during employment. MainePERS will communicate any information received from the employer to the member, and the member will be provided an opportunity to rebut the employer's information.
 - (2) **Member acceptance or refusal.** If the member has not terminated employment and the employer will provide the reasonable accommodations, the member shall inform MainePERS whether the member will attempt to perform the essential functions of the employment position with the reasonable accommodations. The member may provide evidence to MainePERS that the employer has refused to make the reasonable accommodations or that they would not permit the member to perform the essential functions of the employment position.
 - (3) **Final determination.** After employer or member refusal or the failure of a good faith attempt to perform the essential functions of the employment position with reasonable accommodation, MainePERS shall make a decision on the member's application for disability retirement.
4. **Application of disabled veteran presumption.** A member seeking application of the disabled veteran presumption pursuant to 5 M.R.S. §§ 17924 or 18524, based on a determination of individual unemployability must authorize release of information from the U.S. Department of Veterans Affairs as requested by MainePERS in addition to cooperating in providing other essential information needed to process the disability retirement application.

SECTION 3. REVIEWS FOR CONTINUING ELIGIBILITY

1. **Scheduling of reviews.** A disability retiree may be reviewed for continuing eligibility for disability retirement benefits in the following circumstances:
 - A. The retiree has not yet had a determination that they are unable to engage in any substantially gainful activity for which they are qualified by training, education or experience and at least two years have passed since the date of the determination that the retiree is eligible for disability retirement benefits; or
 - B. Earnings or other information about a retiree's activities received by MainePERS show that the retiree may have capacity to engage in substantial gainful activity and at least one year has passed since any previous review.
2. **Cooperation with review.** A retiree subject to review under subsection 1 must cooperate in providing information to MainePERS, including providing medical records and releases

permitting health care providers to provide medical records. An unjustified failure to cooperate will result in the discontinuance of benefits. If the failure continues for one year, it will result in permanent cessation of benefits.

3. **Standard on review.** The retiree's eligibility for retirement benefits continues if the retiree is unable to engage in any substantially gainful activity due to functional limitations caused by the mental or physical conditions that were the basis for the initial eligibility determination or by one or more new conditions that arose from the conditions that were the basis for the initial eligibility determination.
4. **Rebuttable presumption.** A retiree is presumed to be no longer eligible for retirement benefits if the retiree has earned more than the substantially gainful activity amount in one or more years while receiving disability retirement benefits. This presumption may be rebutted by information showing that the standard in subsection 3 is met notwithstanding these earnings.
5. **Use of the medical review service provider and independent medical examinations**
 - A. The Chief Executive Officer may determine that the retiree continues to be eligible without an IME and, if continuing eligibility is clear to a lay person, may determine that the retiree continues to be eligible without use of the medical review service provider.
 - B. The Chief Executive Officer may not determine that the retiree is no longer eligible for retirement benefits without an IME unless the IME is waived by the retiree.
 - C. IMEs under this Section are subject to the same reimbursement and waiver requirements as IMEs under Section 2.

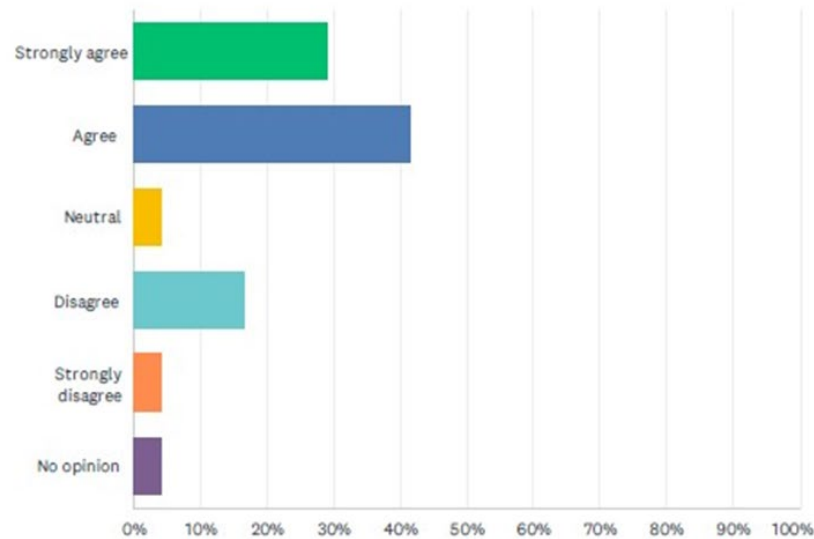
STATUTORY AUTHORITY:
5 M.R.S. §§ 17103(4)

EFFECTIVE DATE:
March 1, 2023 – filing 2023-030

Appendix 2

Q1 The disability application and process is easy to understand and follow.

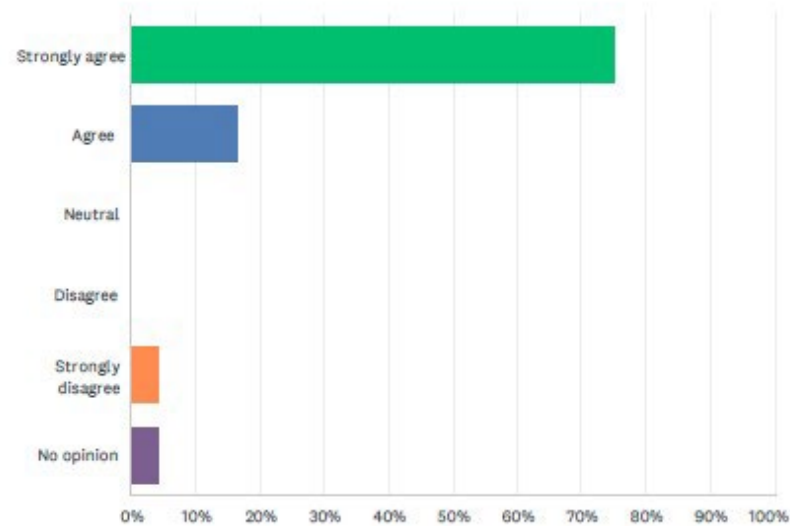
Answered: 24 Skipped: 0



ANSWER CHOICES	RESPONSES	
Strongly agree	29.17%	7
Agree	41.67%	10
Neutral	4.17%	1
Disagree	16.67%	4
Strongly disagree	4.17%	1
No opinion	4.17%	1
TOTAL		24

Q2 I was treated with respect by those handling my application.

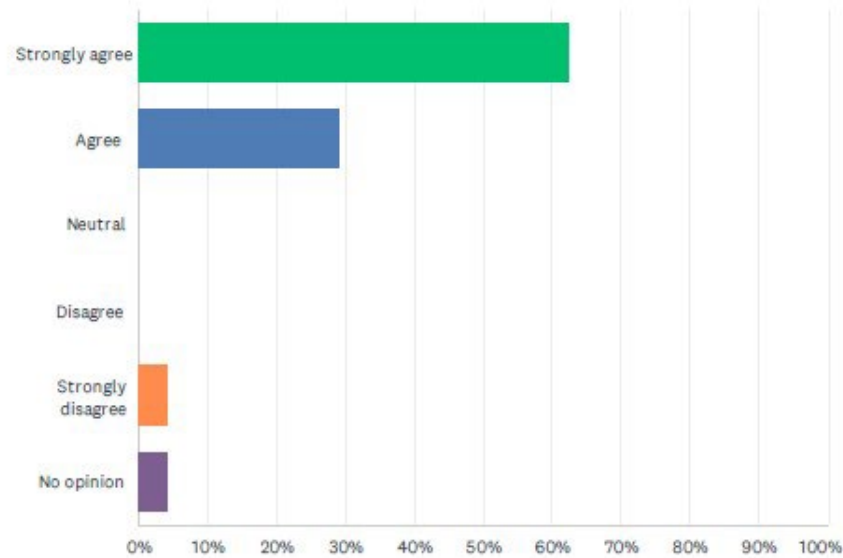
Answered: 24 Skipped: 0



ANSWER CHOICES	RESPONSES	
Strongly agree	75.00%	18
Agree	16.67%	4
Neutral	0.00%	0
Disagree	0.00%	0
Strongly disagree	4.17%	1
No opinion	4.17%	1
TOTAL		24

Q3 MainePERS responded to my questions in a timely manner.

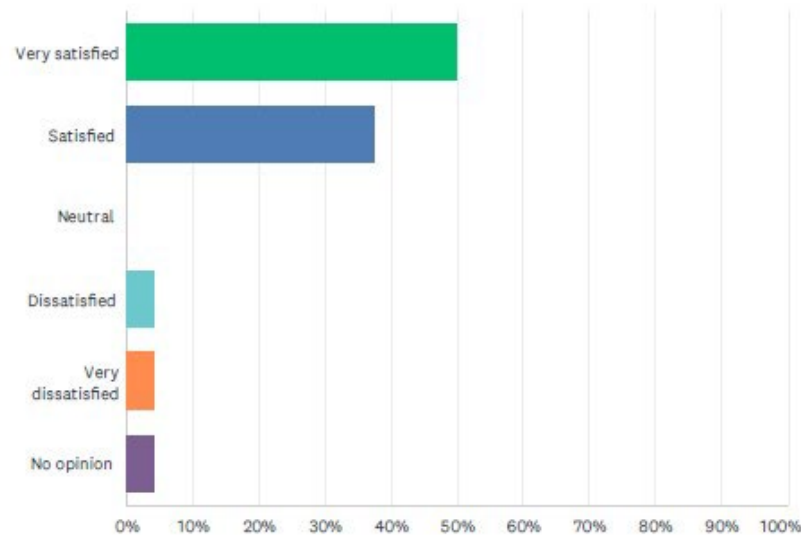
Answered: 24 Skipped: 0



ANSWER CHOICES	RESPONSES	
Strongly agree	62.50%	15
Agree	29.17%	7
Neutral	0.00%	0
Disagree	0.00%	0
Strongly disagree	4.17%	1
No opinion	4.17%	1
TOTAL		24

Q4 The Disability Services process was fairly conducted.

Answered: 24 Skipped: 0



ANSWER CHOICES	RESPONSES	
Very satisfied	50.00%	12
Satisfied	37.50%	9
Neutral	0.00%	0
Dissatisfied	4.17%	1
Very dissatisfied	4.17%	1
No opinion	4.17%	1
TOTAL		24

2023 Disability Services Satisfaction Survey
Comments

	End Date	Question 5: Please feel welcome to provide any additional feedback regarding your experience with MainePERS Disability Services Unit.
		Open-Ended Response
3	2023-10-02 19:24:25	[Employee] was very helpful getting through the process
5	2023-10-02 15:57:10	The professionalism coupled with kindness made the process comfortable. It is hard to present your narrative to a faceless stranger. The gentle way questions were asked made it less stressful. Thank you!
8	2023-09-22 08:22:30	I've sent my comments via email to [Employee]
9	2023-09-21 14:05:48	[Employee] and everyone I dealt with responded back to me every time promptly
10	2023-09-21 10:02:30	The IME process needs improvement. Had I not acted proactively, my case would have resulted in a denial. I'd be happy to speak to someone about it.
12	2023-09-19 15:55:57	MainePERS Disability Service was very pleasant and made the process comfortable. The State of Maine HR on the other hand made the process difficult. Thank you MainePers for all you efforts.
15	2023-09-19 13:34:16	It was a very long process, a lot of information, but my contact [Employee] helped me every step of the way made it very clear to me laid everything out and if I ever needed any help, she was always there very happy with the way I was taken care of
16	2023-09-19 08:13:29	Because of my disability, please keep me updated if information is needed on my stroke situation. Thanks
19	2023-09-18 11:22:45	Main parts representative were very, very helpful. But because of my disability, I have a hard time understanding the process I need it in more simple terms, but the representatives were great.
20	2023-09-18 11:16:49	[Employee] is the most patient and kind person I have ever spoken to she answered every single question I had is very knowledgeable about disability. I could not have gone through the process without her help. thank you.
21	2023-09-18 10:31:01	I took just about six months and I was given more info each time I spoke with someone . I feel if I called with a question I could get an answer quickly in return.
23	2023-09-18 10:03:14	[Employee] was very helpful and seemed like she really cared.
24	2023-09-18 10:03:10	Everyone I have dealt with in the unit I found to be friendly and professional. The process itself was tedious.