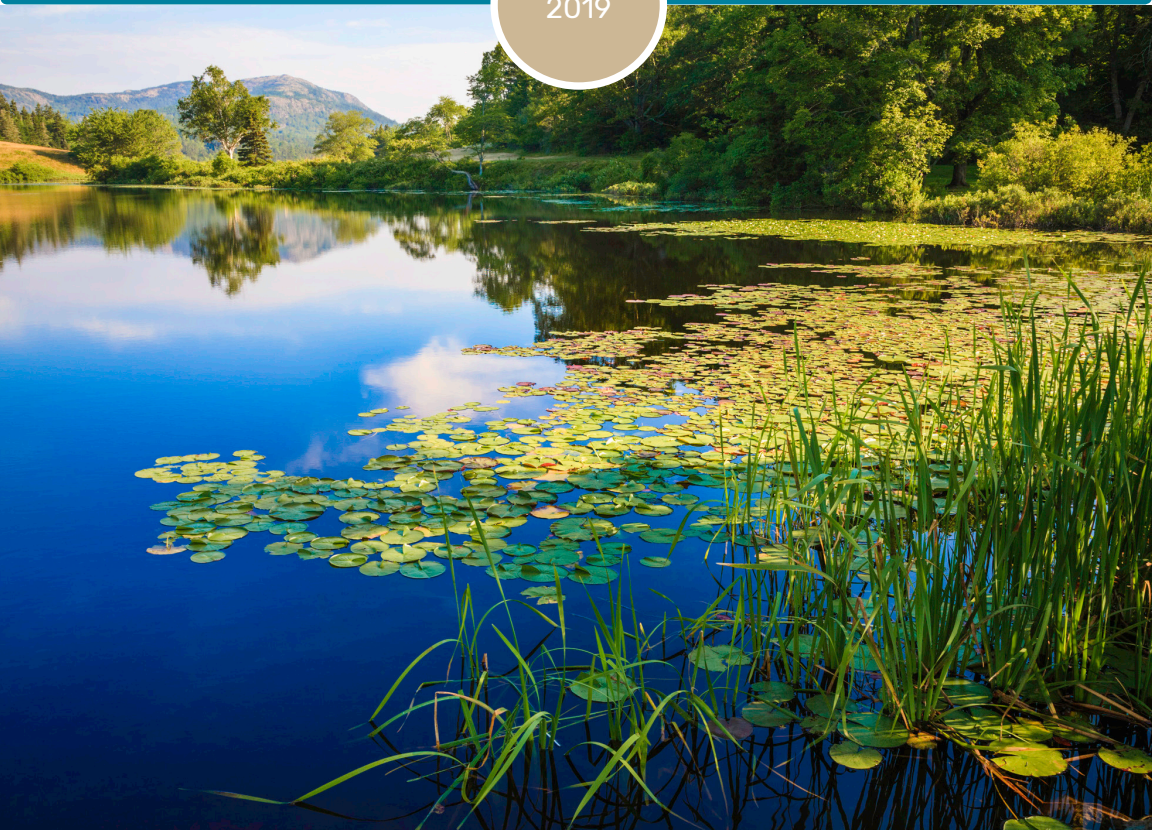


APPEALS

A Guide to the
Administrative Appeals Process

2019



MainePERS
PUBLIC EMPLOYEES RETIREMENT SYSTEM

A Guide to the MainePERS Administrative Appeals Process

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The information contained in this guide is not intended to substitute for legal advice or the assistance of an attorney, nor is the guide intended to form the basis of any rights between MainePERS and any party.

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INTRODUCTION

This guide is intended to assist you in understanding the Administrative Appeals Process of Maine Public Employees Retirement System, also referred to as “MainePERS” or the “System”. Please keep in mind that the specific requirements pertaining to your appeal are contained in the laws and rules governing MainePERS. Although we do our best to update our documents regularly, there are frequent changes, and the most recent law may not be reflected in this guide. If you have any questions about the MainePERS administrative process or would like a paper copy of this guide, please contact us at (207)-512-3100.

WHAT HAPPENS IF MY APPLICATION OR REQUEST IS DENIED BY THE EXECUTIVE DIRECTOR?

If MainePERS denies your requested action:

- You will receive a letter called the “Decision of the Executive Director” listing the reasons for the denial;
- You will receive a copy of the entire administrative record that was used in forming the basis of the denial; and,
- If you believe that you have been adversely affected by the decision, you have the right to request an administrative appeal thirty (30) days from the date the decision letter was received by you.

HOW DO I APPEAL?

To begin the appeal process, you must send a statement of appeal to the Board of Trustees **within 30 days from the date you receive your denial letter**. Your letter should include a brief statement about the decision you are appealing, and also include your name, address and phone number. MainePERS does not accept appeal requests via email. Please mail or fax your request to:

Board of Trustees
MainePERS
P.O. Box 349
Augusta, ME 04332-0349
Fax: 207-512-3282

AM I REQUIRED TO HIRE AN ATTORNEY?

Although there is no requirement that you be represented or advised by an attorney, MainePERS encourages you to seek the advice of an attorney at any stage of your case. You have the right to represent yourself, or to be represented by an attorney or by a Designated Representative that you select. You are responsible for any expenses associated with hiring an attorney and any costs associated with witnesses whose attendance you require. For your convenience, at the back of the guide, we have included a [list](#) of some organizations that may be able to help you find an attorney.

WHAT ARE MY RESPONSIBILITIES DURING AN APPEAL?

It is your responsibility as the Appellant to participate in all phone conferences and hearings in your appeal. If a scheduling conflict arises, you must notify the MainePERS Appeals Clerk to request a change of schedule. If you fail to participate, you will receive written notice regarding your absence. If within ten business days you submit information that demonstrates to the Hearing Officer that you had good cause for not participating, the appeal will be reinstated. Otherwise, your appeal will be dismissed and the “Decision of the Executive Director” will become final.

WHO ARE SOME OF THE PEOPLE INVOLVED IN AN APPEAL?

- **Appeals Clerk:** The MainePERS employee who acts as a point of contact between the Hearing Officer and the parties to an appeal.
- **Board of Trustees:** An eight-member group who makes the final agency decision on all appeals.
- **Executive Director of MainePERS:** The person responsible for the administration of the System, including the approval of all benefit payments.
- **Executive Director’s Designee:** A member of MainePERS staff assigned to make certain decisions on behalf of the Executive Director.

- **Hearing Officer:** An independent contractor (not a MainePERS employee) who is responsible for conducting the hearing and issuing a fair and impartial recommended final decision.
- **Medical Board:** In disability appeals, a panel of medical providers who are available for consultation internally to MainePERS regarding an Appellant's medical situation.
- **MainePERS System Representative:** An employee of MainePERS who represents and advocates for the agency in an appeal.

I HAVE REQUESTED AN APPEAL. WHAT ARE THE NEXT STEPS?

- **Letter from the Hearing Officer:** If you are not represented by an attorney you will receive a letter from the Hearing Officer assigned to your appeal. This letter will explain, among other things, the appeals process and the role of the Hearing Officer assigned to your appeal. If you have had prior interactions with the Hearing Officer or are aware of any reason why you believe that the Hearing Officer cannot be fair or impartial during your appeal, you should make that information known at the Pre-Hearing Conference so the Hearing Officer can determine whether to continue to preside over your case.
- **Pre-Hearing Conference is Scheduled:** The Appeals Clerk will contact you to set up a convenient time for the phone conference. Once a date is set, the Appeals Clerk will send you a confirmation letter, which will include the call-in instructions. If you have an attorney or a Designate Representative, the Appeals Clerk will schedule the phone conference directly with them.
- **Pre-Hearing Conference:** During the conference, the Hearing Officer will review the reasons for your appeal, explain the next steps, and set a schedule of events that will take place during the course of your appeal. The Pre-Hearing

Conference is not the time to introduce evidence or argue the merits of your appeal. During the conference, you will be provided the choice between an unrestricted appeal and an expedited appeal.

- In an expedited appeal, the evidence is limited to your testimony, the testimony of any other non-expert witnesses, and the documentary evidence already considered by the Executive Director. If you elect an expedited appeal, it is anticipated that a decision will be issued in your appeal within approximately 90 days.
- In an unrestricted appeal, you may introduce additional documentary evidence and the testimony of expert and non-expert witnesses. However, your appeal will likely take substantially longer than 90 days.
- **Submission of Exhibits and List of Witnesses:** Prior to the hearing, you and the MainePERS representative will have the opportunity to submit evidence and your list of witnesses to the Appeals Clerk. The Hearing Officer will set a deadline for submission of these documents during the prehearing conference.
- **Hearing:** The hearing is your opportunity to present your case to the Hearing Officer. All hearings are under oath and recorded by a court reporter. Depending on your choice of appeal, you will also have the opportunity to present additional evidence and witnesses to testify on your behalf.

THE HEARING IS OVER. WHAT HAPPENS NEXT?

- **Transcript:** You will receive a copy of your hearing transcript from the Appeals Clerk.
- **Record is Closed:** MainePERS will now conduct another review of the entire record (including the transcript) to see if the decision should be changed in light of any new information. After this review, the case will be returned to the Hearing Officer.

- **Closing Memorandum:** Unless the original decision was reversed by MainePERS during the review, you will next have an opportunity to submit a closing memorandum to the Hearing Officer with your reasons why the decision should be reversed.
- **Decision of the Hearing Officer:** The Hearing Officer will conduct an impartial review of the entire record and issue a recommended decision, either reversing the decision of MainePERS or affirming. The recommended decision will be mailed to you. If you feel that the decision contains errors that the Board of Trustees has authority to address, you will need to notify the Board and Board Counsel in writing within 10 days after you receive the recommended decision.
- **Decision by the Board of Trustees:** Unless the recommended decision contains an error, the Board generally is required to adopt the recommended final decision. The final decision signed by the Board will be mailed to you.
- **Further Proceedings:** If you disagree with the Board's decision, you can appeal to the Superior Court within 30 days after receiving the Board's decision.

WHAT IS SOME OTHER USEFUL INFORMATION THAT MAY HELP ME WITH THE ADMINISTRATIVE HEARING PROCESS?

- **Administrative Record:** This file contains the information MainePERS considered in making the decision to deny your application or request. This becomes part of the evidence in your appeal.
- **Evidence:** Is the information provided by the parties, which tends to prove or disprove an issue in the case; for example, medical records.
- **Ex Parte Communication Rule:** The Hearing Officer may not speak with one party about the case unless all parties are present. If you write to the Hearing Officer, you must

also send a copy of your correspondence to the MainePERS Representative, and any other parties involved in the appeal.

- **Designated Representative.** You may appoint a Designated Authorized Representative (“Representative”) to participate with you in telephone conferences and/or hearings by filling out the MainePERS Designated Authorized Representative Form, and filing the form with the Appeals Clerk.
- **Notice to Other Parties:** If an appeal involves a Participating Local District (PLD) employee, the System will notify the PLD of the appeal so that the PLD can elect to be an additional party to the appeal.
- **Participating Local District (PLD):** Is a local district that has approved the participation of its employees in MainePERS.
- **Pre-Hearing Conference:** This is usually a telephone conference among you, your attorney or representative (if you have one), the MainePERS Representative, and the Hearing Officer.
- **What if I Forgot to Add a Condition to my Application?** If you have selected an unrestricted appeal and would like to add another medical condition that has not been considered by the Executive Director, you may do so by filing an “Addendum” to your application. If an Addendum is filed during an unrestricted appeal process, the appeal will be returned to the Executive Director for a decision on the new conditions raised in the Addendum. A copy of the form can be found by on our website or by contacting MainePERS.

SOURCES FOR ADVICE OR REPRESENTATION

AFSCME, Council 93 20 Winter Street Augusta, ME 04330 Tel: (207) 622-6191 Web: www.afscme93.org/maine	Maine School Management Association 49 Community Drive Augusta, ME 04332-0710 Tel: (207) 622-3473 Toll Free: 1-800-660-8484 Web: www.msmaweb.com
Cumberland Legal Aid Clinic University of Maine Law School 246 Deering Avenue Portland, ME 04102 Tel: (207) 780-4370 Toll Free: 1-877-780-2522 Web: www.mainerlaw.maine.edu/public-service/clac	Maine State Bar Association Lawyer Referral Service 124 State Street, PO Box 788 Augusta, ME 04338-0788 Tel: (207) 622-1460 Web: www.mainebar.org Email: lrs@mainebar.org
Legal Services for the Elderly, Inc. 5 Wabon Street Augusta, ME 04330 Tel: (207) 621-0087 Toll Free: 1-800-750-5353 Web: www.maineelse.org	Maine State Employees Association SEIU Local 1989 65 State Street, PO Box 1072 Augusta, ME 04330-5126 Tel: (207) 622-3151 Toll Free: 1-800-452-8794 Web: www.mseaseiu.org
Maine Education Association 35 Community Drive Augusta, ME 04330 Tel: (207) 622-5866 Web: www.maineea.org	Volunteer Lawyers Project 75 Pearl Street Portland, ME 04101 Tel: (207) 774-4348 Toll Free: 1-800-442-4293 Web: www.vlp.org Email: contact@vlp.org
<p><i>Advice/representation can also be obtained through private attorneys. Some of the organizations listed above may have income guidelines or limits for their services.</i></p>	

LINKS TO COMMONLY USED RULES AND STATUTES

Title 2 MRSA §1A

<https://legislature.maine.gov/statutes/2/title2sec1-A.html>

Title 3 MRSA §701 to §860

<https://legislature.maine.gov/statutes/3/title3ch29sec0.html>

Title 4 MRSA §1201 to §1361

<https://legislature.maine.gov/statutes/4/title4ch27sec0.html>

Title 5 MRSA Part 20

<https://legislature.maine.gov/statutes/5/title5ch0sec0.html>

Chapter 421: GENERAL PROVISIONS §17001 - §17451

<https://legislature.maine.gov/statutes/5/title5ch421sec0.html>

Chapter 423: STATE EMPLOYEES AND TEACHERS §17601 - §18101

<https://legislature.maine.gov/statutes/5/title5ch423sec0.html>

Chapter 425: PLD §18200 - §18701

<https://legislature.maine.gov/statutes/5/title5ch425sec0.html>

Chapter 427: PLD CONSOLIDATED PLAN §18801 - §18806

<https://legislature.maine.gov/statutes/5/title5ch427sec0.html>

Appeals of the Executive Director Rule 702

<https://www.maine.gov/sos/cec/rules/90/94/411/411c702.docx>

LINKS TO COMMONLY USED FORMS

Addendum to Application for Disability Retirement Benefits

<https://www.mainebers.org/Forms/Forms PDFs/DC-0003a.pdf>

Consent Form Designating Authorized Representatives

<https://www.mainebers.org/Forms/Forms PDFs/CL-0888A.pdf>



MainePERS

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Appeals Contacts



Reach us by phone or fax

Direct Line to Legal Services: 207-512-3219

Main Line: 207-512-3100

Toll-free: 800-451-9800

Fax: 207-512-3101

Maine Relay: 711



On the web

mainepers.org

Email: Legal@mainepers.org



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Monday through Friday from 8am to 5pm
with the exception of recognized holidays