

APPEALS

A Guide to the
Administrative Appeals Process



MainePERS

PUBLIC EMPLOYEES RETIREMENT SYSTEM

A Guide to the MainePERS Administrative Appeals Process

A publication of
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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 helps explain how you appeal a decision by MainePERS. This is just an overview. Please keep in mind that you will have the chance to ask questions and receive further guidance during the appeal process.

WHAT HAPPENS IF I DISAGREE WITH A MAINEPERS DECISION?

To appeal a MainePERS decision that affects you, you must let the MainePERS Board of Trustees know in writing within 30 days from the date that you received the decision. You may do this by email, mail, fax, or in person at our office in Augusta.

There is no special format required to appeal, but you should include your name and describe the decision you are appealing.

Here is where you can let us know you are appealing:

Email: appeals@mainepers.org

Fax: (207) 512-3101

Mail: MainePERS Board of Trustees
P.O. Box 349
Augusta, ME 04332

In Person: 139 Capitol Street,
Augusta

Your appeal will be assigned to an independent Hearing Officer, who will run the appeal process and recommend a decision to the Board of Trustees. The Hearing Officer is not a MainePERS employee and by law is not controlled by MainePERS.

The appeals process is like a court case, except less formal. There will be at least two parties, you and MainePERS. In rare cases there may be more than two, for example, if the MainePERS decision you are appealing also affects another person or your employer and they want to participate.

The parties in an appeal cannot directly communicate with the Hearing Officer except during case conferences and hearings. All other communication with the Hearing Officer must be through a letter or email to the MainePERS Appeals Clerk. All parties must be included in any communications with the Hearing Officer, so you must send a copy to the MainePERS representative (called the "System Representative") and any other parties.

Do I Need an Attorney?

You are not required to have an attorney, but having an attorney will make the process easier for you and help you present your case. You instead may choose to be represented by a person who is not an attorney (called a “Designated Representative”). You also could have another person accompany you and assist you in representing yourself.

MainePERS cannot help you find an attorney, but we can provide you with a list of attorneys who have represented people in MainePERS appeals in recent years. We also have included a list of some organizations at the back of this guide that might help you find an attorney.

Can I Get Attorneys’ Fees?

MainePERS will pay attorneys’ fees of up to \$12,000 in a disability retirement appeal if the attorney gets a good result for you. Details are in a MainePERS Rule, which your attorney can explain. Otherwise, MainePERS cannot pay for your attorney.

What are my Responsibilities During an Appeal?

You must keep the MainePERS Appeals Clerk up to date on your telephone number, mailing address, and email address.

You, your attorney, or your Designated Representative must participate in all phone conferences and hearings in the appeal and meet all deadlines set by the Hearing Officer.

If you find that you are not going to be able to attend a conference or hearing or meet a deadline, you must let the MainePERS Appeals Clerk know as soon as you can and request a schedule change. The Hearing Officer will decide whether to grant or deny your request for a schedule change.

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

- **Letter from the MainePERS Appeals Clerk:** You will receive a letter from the Appeals Clerk identifying the Hearing Officer assigned to your case and giving you the opportunity to select a different Hearing Officer. If you have not already received a copy of the information considered by MainePERS in making the decision that you are appealing (called “the Appeals Packet”), the letter will include that information.

- **Letter from the Hearing Officer:** If you do not have an attorney, you or your Designated Representative will receive a letter from the Hearing Officer. This letter will explain the appeals process and the role of the Hearing Officer, among other things.
- **Preliminary Conference:** The Appeals Clerk will contact you to set up a convenient time for a preliminary phone conference. Once a date is set, the Appeals Clerk will send you a confirmation letter or email that will include the date, time and call-in instructions. If you have an attorney or a Designated Representative, the Appeals Clerk will schedule the phone conference directly with them.

The preliminary conference is an introductory conference that will include the Hearing Officer; you, your attorney, or your Designated Representative; the System Representative; and any other parties. The Hearing Officer will discuss the issues to be decided in the appeal and make scheduling decisions. The preliminary conference is not the time to prove your case.

During the preliminary conference, the Hearing Officer will ask you whether you desire an “expedited” or “unrestricted” appeal.

- Expedited appeal. You will get a faster decision in an expedited appeal, but you will have more limits on the information that the Hearing Officer can consider. You will be limited to the information in the Appeals Packet, your own testimony, and testimony of witnesses who are not experts. In an expedited disability appeal, the Hearing Officer can consider only the conditions addressed in the MainePERS decision. You should receive a Hearing Officer’s recommended decision in an expedited appeal roughly ninety days after the preliminary conference.
- Unrestricted appeal. In an unrestricted appeal, you may add new information that is not in the Appeals Packet and have testimony from you and other witnesses, including expert witnesses. In an unrestricted appeal from a disability decision, you may claim new medical conditions that were not considered in the decision on appeal. An unrestricted appeal can take substantially longer than an expedited appeal, often more than a year.

The Hearing Officer will schedule a hearing date and set a deadline to submit a list of all witness who will testify at the hearing. In an unrestricted appeal, the Hearing Officer also will set a deadline for the parties to submit additional evidence.

- **Pre-Hearing or Case Management Conferences:** Prior to the hearing, the Hearing Officer may hold one or more pre-hearing or case management conferences to address issues that have come up.
- **Hearing:** A hearing is similar to a trial, except that it is less formal and the rules are more relaxed. Hearings may be held in person or by video conferencing (like Zoom or Teams). The Hearing Officer will preside over the hearing and help you understand the rules and procedures. Typically, the hearing will include you, your attorney or Designated Representative, the System Representative, witnesses that you or the System Representative intend to call, and a court reporter who will record the hearing and create a written transcript. You may ask questions of any witnesses, as can the System Representative, any other parties, and the Hearing Officer. If you testify, they can ask you questions too. Witnesses other than you generally cannot listen to the testimony of other witnesses, but if that is a concern, you can discuss with the Hearing Officer whether an exception can be made.

THE HEARING IS OVER. WHAT HAPPENS NEXT?

- **Reconsidered Decision:** MainePERS will have the chance to change their minds and reverse the original decision based on the information and testimony submitted during the appeal. If MainePERS reaches the same decision but for a different reason, you can ask to have a new hearing and provide additional information to address the new reason.
- **A New Appeals Packet is Created:** If you are appealing from a disability retirement decision, you will receive an updated and expanded Appeal Packet after the reconsidered decision is issued that will contain all of the evidence considered at that point.
- **Briefing:** The Hearing Officer will set a date for the parties to submit written arguments about why they think they are right.

- **Recommended Final Decision of the Hearing Officer:**
The Hearing Officer will review the evidence, read the written arguments, and send the parties a Recommended Decision for Comment. The Hearing Officer will set a deadline for you to make comments on the recommended decision. This is a chance to point out any mistakes. After considering the comments and making any changes, the Hearing Officer will send the Recommended Final Decision to the Board. If you believe the Recommended Final Decision is wrong, you have 10 days to notify the Board in writing. If you do, the Board Counsel, an Assistant Attorney General, will review the case to see if there is an error. Unless the Recommended Final Decision contains an error, the Board is generally required to adopt it as their own decision.
- **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.

SOME USEFUL DEFINITIONS TO ASSIST YOU IN YOUR APPEAL

- **Addendum.** In an unrestricted appeal from a disability decision, you may make a claim for new medical conditions that were not considered in the original decision by filing an "Addendum" to your benefits application. There is a form on MainePERS' website for this. You may put in new information relating to the new conditions, and then MainePERS will review the information as if it were a new application and make a new decision. If the new decision is not in your favor, your appeal will include those new medical conditions.
- **Appeals Clerk.** "Appeals Clerk" means the clerk who keeps the files and acts as a go-between for the Hearing Officer and the parties to an appeal. All communications with the hearing officer must go through the Appeals Clerk.
- **Appeals Packet.** The appeals packet contains all of the records relied upon by the MainePERS in reaching its decision. When MainePERS reconsiders the case after a hearing and issues a reconsidered decision, an updated appeals packet will be provided to you that will contain all information considered at that point.

- **Brief.** The brief is a written argument that you want the Hearing Officer to think about when reaching a decision. Briefs must be based on the information that the Hearing Officer has accepted as evidence up to that point. You will not be allowed to introduce new evidence in your brief.
- **Board of Trustees.** An eight-member group that makes the final agency decision on appeal, after considering the Hearing Officer's recommended final decision.
- **Board Counsel.** "Board Counsel" means the Assistant Attorney General who advises the Board of Trustees.
- **Burden of Persuasion.** In order to win your appeal, you have to convince the Hearing Officer that it is "more likely than not" that the MainePERS decision was incorrect.
- **Chief Executive Officer.** The person responsible for the administration of the System, including the approval of all benefit payments.
- **Chief Executive Officer's Designee.** A member of MainePERS staff designated to make certain decisions on behalf of the Chief Executive Officer.
- **Designated Representative.** If you do not have an attorney, you may designate a non-attorney to represent or assist you in your appeal.
- **Disability Standard.** In order to qualify for MainePERS disability benefits, you must prove that it is more likely than not that one or more mental or physical conditions made you unable to do your job, that this happened while you were in a MainePERS-covered job, and that this is permanent. Depending on your situation, there may be additional requirements. The MainePERS decision you are appealing from will tell you what requirement MainePERS decided your case did not meet.
- **Expert Witness.** An expert witness is someone who has special knowledge or experience. For example, a doctor may be an expert witness in a disability appeal.

- **Evidence.** Evidence is the information provided by the parties that tends to prove or disprove an issue in the case; for example, medical records.
- **Hearing Officer.** The Hearing Officer is an independent contractor (not a MainePERS employee) who is responsible for conducting the hearing and issuing a fair and impartial recommended final decision.
- **Independent Medical Examiner.** An independent medical examiner is a doctor or other health care provider (not a MainePERS employee and not your doctor) who conducts an independent medical examination of a disability applicant.
- **MainePERS or System Representative.** “MainePERS Representative” or “System Representative” means the person representing MainePERS in an appeal.
- **Medical Review Service Provider.** The medical review service provider is a medical organization that employs doctors and other health care providers who advise MainePERS on medical issues, particularly for disability cases. The current provider is the University of Massachusetts Chan Medical School.
- **Reconsidered Decision.** After the hearing, the Chief Executive Officer’s Designee will review the evidence, including the hearing transcript, and make a new decision. The reconsidered decision may affirm, reverse or amend the original decision.
- **Recommended Final Decision.** The Hearing Officer’s final recommendation to the MainePERS Board of Trustees on how to decide the appeal.
- **Transcript.** The transcript is a written recording of the hearing. You should receive a copy of the transcript within a short time after the hearing.

SOURCES FOR ADVICE OR REPRESENTATION

<p>AFSCME, Council 93 6 Rockwood Drive Manchester, ME 04351 Tel: (207) 622-6191 Web: www.afscme93.org/maine</p>	<p>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</p>
<p>Cumberland Legal Aid Clinic University of Maine School of Law 300 Fore Street Portland, ME 04101 Tel: (207) 780-4370 Toll Free: 1-877-780-2522 Web: www.mainerlaw.maine.edu/public-service/clinics-at-maine-law</p>	<p>Maine State Bar Association Lawyer Referral Service 124 State Street Augusta, ME 04330 Tel: (207) 622-1460 Web: www.mainebar.org Email: irs@mainebar.org</p>
<p>Legal Services for the Elderly, Inc. 5 Wabon Street Augusta, ME 04330 Tel: (207) 621-0087 Toll Free: 1-800-750-5353 Web: www.mainelse.org</p>	<p>Maine State Employees Association SEIU Local 1989 5 Community Drive, FL 3 Augusta, ME 04330 Tel: (207) 622-3151 Web: www.mseaseiu.org</p>
<p>Maine Education Association 35 Community Drive Augusta, ME 04330 Tel: (207) 622-5866 Web: www.maineea.org</p>	<p>Volunteer Lawyers Project 75 Pearl Street Portland, ME 04101 Toll Free: 1-800-442-4293 Web: www.vlp.org Email: contact@vlp.org</p>
<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>	



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: appeals@mainepers.org



Mailing Address

PO Box 349, Augusta, Maine 04332-0349