

**Chapter 506: ELIGIBILITY FOR DISABILITY RETIREMENT BENEFITS**

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

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**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.~~
- ~~3.2.~~ **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.
- ~~4.3.~~ **Earnings.** "Earnings" means wages, tips, and other compensation from employment that is reported as Medicare wages and tips on federal W-2 tax forms and income that is reported on federal self-employment tax schedules as subject to self-employment tax.
- ~~5.4.~~ **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.
- ~~6.5.~~ **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.
- ~~7.6.~~ **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.
- ~~8.7.~~ **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.
- ~~9.8.~~ **Mental or physical condition.** A “mental or physical condition” is a condition affecting the member mentally or physically that is medically diagnosable.
- ~~10.9.~~ **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.
- ~~11.10.~~ **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).
- ~~12.11.~~ **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.
- ~~13.12.~~ **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.
- ~~14.13.~~ **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 one or more~~ 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.

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

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