

# Public Safety Memorial Fund Board Minutes April 26, 2012

The Public Safety Memorial Fund Board held a meeting on Thursday, April 26, 2012 at the Oregon Public Safety Academy in Salem, Oregon. The meeting to order at 10:20 a.m.

## Attendees

Board Members:

Richard Evans, Chair\*

Colette Peters

Jeff Jones

Richard Brown

Mike Wells

\* Upon Senate confirmation

DPSST Staff:

Eriks Gabliks, Director

Marilyn Lorance, Standards and Certification Program Supervisor

Linsay Hale, Compliance Coordinator



## 1. Nominate PSMF Board Chairperson

Nominate a Public Safety Memorial Fund Board Chairperson.

*Colette Peters moved to appoint Dep. Superintendent Richard Evans as the chair of the Public Safety Memorial Fund Board, pending senate confirmation and appointment to the Board on Public Safety Standards and Training. Mike Wells seconded the motion. The motion carried unanimously.*

## 2. Minutes from December 2, 2011 Meeting

Approve meeting minutes from December 2, 2011.

*Mike Wells moved to approve the minutes from the December 2, 2011 Public Safety Memorial Fund Board meeting with one immaterial change to the attendees list. Jeff Jones seconded the motion. The motion carried unanimously.*

## 3. OAR 259-070-0020 – Proposed Rule Update

*See Appendix A*

Chair Evans asked if everyone had reviewed the information provided by staff. All had. Linsay Hale reviewed the proposed update for the Board.

Action Items:

1. Determine meaning of “alternate coverage.”

***Extensive discussion was had by Board members surrounding the definition of “alternate coverage.” Recommendations were made to staff to include writing the rule to allow for Board discretion on a case-by-case basis. Staff will use Board recommendations to develop draft rule language for consideration at the next PSMF Board meeting.***

2 & 3. Determine whether to approve filing the proposed language for OAR 259-070-0020, not including any language addressing the definition of “alternate coverage,” with the Secretary of State as a proposed rule and as a permanent rule if no comments are received.

***Jeff Jones moved to approve filing the proposed language without the definition of “alternate coverage” as proposed rule with the Secretary of State, and permanent rule if no comments are received. Mike Wells seconded the motion. The motion carried with a unanimous vote.***

4. Determine whether there is a significant fiscal impact on small businesses.

***Consensus was reached that the proposed rule change does not have a significant impact on small business.***

#### **4. Next meeting – July 26, 2012**

With no further business to discuss, the meeting was adjourned at 11:05 a.m.

## **Appendix A**

### **Department of Public Safety Standards and Training Memo**

**Date:** April 26, 2012  
**To:** Public Safety Memorial Fund Board  
**From:** Linsay Hale  
Rules & Compliance Coordinator  
**Subject:** OAR 259-070-0020 – Proposed Rule  
PSMF – Discretionary Benefits

#### **Issue 1: Health and Dental Reimbursement**

##### **a) “Alternate Coverage”**

ORS 243.956(5) allows for the Board to award comparable health and dental insurance reimbursement “if alternate coverage is not provided.” The statute does not clarify the meaning of “alternate coverage”. Legal research indicates that this clause was added to the statute in 2001 and was intended to avoid “double-dipping” situations in which health and dental benefits were being paid to everyone, whether they needed them or not.

The Board will need to decide on a definition that will clarify the meaning of “alternate coverage” while addressing some of the following potential situations:

- (A) An eligible recipient is covered at the time of application for reimbursement, but later quits or loses their job.
- (B) An eligible recipient decides to quit their job to pursue an education.
- (C) An eligible recipient has alternative coverage available, but chooses not accept it in an effort to obtain health and dental payments from PSMF.

##### **b) Dependent/Student Reimbursement**

ORS 243.954(1) defines a “child” as “a person who is a natural child, adopted child or stepchild of a public safety officer and who is \*\*\* (b) 18 through 22 years of age and enrolled as a full-time undergraduate student \*\*\*.”

Clarification was made in rule to allow for health and dental coverage reimbursement only of the eligible child was enrolled as an undergraduate student during the entire period of requested reimbursement.

#### **Issue 2: Mortgage Payments**

Clarification was made stating that the application requesting mortgage payments must be made one year following the initial determination of eligibility.

## ATTACHMENTS:

A – E-mail from S. Hewitt, Dept. of Justice, Dated 1/4/12.

B – ORS 243.956

The following revised language for OAR 259-070-0020 contains recommended additions (**bold and underlined**) and deletions (~~striketrough text~~).

### **259-070-0020**

#### **Discretionary Benefits**

**(1) The Board will consider financial need, available funds in the Public Safety Memorial Fund and the anticipated demands on the fund in determining payment amounts of discretionary benefits.**

**(2) Health and Dental Insurance Reimbursement. The Board may award health and dental reimbursement for coverage comparable to that provided by the public safety officer to eligible family members or designees if alternate coverage is not provided.**

**(a) For the purposes of this rule, “alternate coverage” means ...**

**(b) Spouses or designees are eligible for five years after the date of the final order confirming eligibility or until re-marriage, whichever occurs first.**

**(c) An eligible child between the ages of 18 and 23 years is eligible for reimbursement only if enrolled as a full-time undergraduate student during the entire period of the requested reimbursement.**

**(3) Mortgage Payments. An application requesting mortgage payments must be made within the first 12 months following the initial determination of eligibility.**

**(4) Scholarship Considerations.** In determining the amount of scholarship benefits under ORS 243.956(8) and (10), "State Institution of Higher Education" means an institution listed in ORS 352.002.

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**ACTION ITEM 1:** Determine meaning of “alternate coverage.”

**ACTION ITEM 2:** Determine whether to approve filing the proposed language, including the decided upon meaning for alternate coverage, for OAR 259-070-0020 with the Secretary of State as a proposed rule.

**ACTION ITEM 3:** Determine whether to approve filing the proposed language, including the decided upon meaning for alternate coverage, for OAR 259-070-0020 with the Secretary of State as a permanent rule if no comments are received.

**ACTION ITEM 4:** Determine whether there is a significant fiscal impact on small businesses.

**From:** Hewitt Serena D [mailto:serena.d.hewitt@state.or.us]  
**Sent:** Wednesday, January 04, 2012 12:21 PM  
**To:** Lorance Marilyn  
**Cc:** Hale Lindsay  
**Subject:** RE: Draft e-mail to DOJ

Good morning!

I have read through ORS 243.956 and, based on the text and context of subsection (5), Ms. Herron is ineligible for health and dental benefits through the Memorial Fund. Please keep in mind that the following is a brief response to your question. If you would like a more formal analysis, please let me know and I will issue a letter.

The current language of ORS 243.956(5) and (6) (emphasis added) is:

(5) **If alternative coverage is not provided**, the board **may** award benefits to the family members of a public safety officer or, if a designation of beneficiary form has been completed under ORS 243.974 (1), to the designee, children and dependents of a public safety officer who has suffered a qualifying death or disability in an amount sufficient to allow the recipients to purchase health and dental insurance comparable to that provided by the public safety officer:

- (a) For five years or until the spouse remarries, whichever occurs first;
- (b) Until a child or a dependent attains 18 years of age or, if the child or the dependent is attending school, 23 years of age; and
- (c) For five years for a designee who is not a person described in paragraph (a) or (b) of this subsection, or until the designee marries, whichever occurs first.

(6) **If alternative coverage is not provided**, the board **may** award benefits for five years to a public safety officer who has suffered a qualifying disability in an amount sufficient to allow the public safety officer to purchase health and dental insurance comparable to the health and dental insurance coverage that the public safety officer had immediately prior to the qualifying disability.

You ask if the meaning of “alternative coverage” precludes a person who is double-covered from being considered for health and dental benefits from the Memorial Fund.

The plain, ordinary meaning of “alternative” is “offering a choice of two or more things : offering for choice a second thing or proposition or other things or propositions \* \* \* <several ~ plans> : expressing a choice or choices \* \* \* .” Webster’s New International Dictionary 63 (3<sup>rd</sup> ed 2001). “Alternative” coverage is the choice of two or more things—in this case, “coverage”—that is provided to the person. While the exact point at which the person must have made the choice to receive alternative coverage is not clear by the statutory language, the use of “is not provided” suggests that the choice has been made at some point in the past. This is because, at the time of making an eligibility determination, coverage either is or is not being provided to the person. Thus, if the person has chosen some other coverage, and is presently receiving that coverage, the person is ineligible to receive Memorial Fund benefits to purchase health and dental insurance. (You do not ask, and therefore I do not address, the situation in which a person has alternative coverage available to that person but chooses not to accept that

coverage in an effort to obtain health and dental payments from the Memorial Fund. You may wish either to define “alternative coverage” or explain DPSST’s interpretation of this statute by rule. We can talk about that if you wish.)

Please note that the language is “alternative” and not “equivalent.” The statute provides that the benefit is to purchase health and dental insurance comparable to that received by the public safety officer. However, the alternative coverage is not required to be comparable before the person becomes ineligible for the benefit. The person just has to have other insurance. That insurance may not be as good, but the plain meaning of “alternative” does not contemplate equivalent choices.

Also, DPSST is not required to provide health and dental insurance. The statutory language is “may,” changed from “shall” in 2003. 2003 Or Laws ch. 295 sec. 2. Thus, once DPSST determines whether the person is being provided alternative coverage, DPSST still has discretion whether to award the benefit. However, if the person has “alternative coverage,” DPSST may not provide the benefit for health and dental insurance.

Finally, the legislative history for ORS 243.956 supports the conclusion that the “alternative coverage” provision was meant to eliminate “double-dipping” situations. In 2001, the state legislature amended *former* ORS 243.956(3) (now sections (5) and (6)) to include the language in bold:

(3) The board:

(a) **If alternative coverage is not provided**, shall award benefits to the spouse and each child

of the public safety officer in an amount sufficient to allow the spouse and children to purchase

health and dental insurance comparable to that provided by the public safety officer:

(A) For five years or until the spouse remarries, whichever occurs first; and

(B) Until the child attains 18 years of age or, if the child is attending school, 23 years of age.

**(b) If alternative coverage is not provided, shall award benefits to a public safety officer**

**who has a job-related permanent total disability in an amount sufficient to allow the public**

**safety officer to purchase health and dental insurance comparable to the health and dental**

**insurance coverage that the public safety officer had immediately prior to the disability. The**

**board shall award benefits under this paragraph for five years.**

\* \* \* \* \*

Diane Middle, then Director for DPSST, testified that one of the two proposed amendments to SB 366 (2001) was “intended to eliminate double health and dental coverage.” Senate Committee on Judiciary, January 26, 2001, tape 11B. Specifically, Ms. Middle testified that the concern regarding “alternative coverage” was that the fund

is small. If health benefits were to be paid to everyone, whether they needed them or not, it would deplete the fund very quickly. The language was suggested by the policy committee to address this concern and have funds available for those who truly did not have insurance at all and avoid double-dipping situations. *Id.* available at <http://arcweb.sos.state.or.us/pages/records/legislative/legislativeminutes/2001/senate/judiciary/index.html>, at 57:58 minutes. I have not pulled Exhibit E that was submitted along with her testimony to see if a more detailed explanation was provided, but will do so if you wish to receive the more formal advice. Based on the testimony, though, the language amending the statute was intended to address the same concern you have before you by making ineligible persons who have other health and dental insurance.

Based on the text, context and legislative history of ORS 243.956, I conclude that a person such as Ms. Herron, who has health and dental insurance coverage through her State employer, is ineligible to receive funds to purchase health and dental insurance from the Memorial Fund. If you have any questions about this advice, or would like to talk about it further, please give me a call.

Thanks,

Serena

Serena D. Hewitt, Assistant Attorney General  
Government Services Section/General Counsel Division  
Oregon Department of Justice  
Phone: 503-947-4530; Fax: 503-378-3784

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**From:** Lorange Marilyn [<mailto:marilyn.lorange@state.or.us>]  
**Sent:** Wednesday, December 28, 2011 4:16 PM  
**To:** HEWITT Serena D  
**Cc:** HALE Linsay  
**Subject:** FW: Draft e-mail to DOJ

Greetings, Serena! Please see Linsay's question below - - we want to do the right thing, both for Mrs. Herron and in terms of interpretation of the PSMF program statutes that govern what we can pay and when. ...

I'm out of the office until the 3<sup>rd</sup> but will be checking e-mail periodically if you have any questions. (or we can chat by phone on the 3<sup>rd</sup>??)

Thanks so much!

Marilyn

**From:** Hale Linsay  
**Sent:** Wednesday, December 28, 2011 12:03 PM  
**To:** Lorance Marilyn  
**Subject:** Draft e-mail to DOJ

Mrs. Kimberly Herron, wife of Correctional Officer Buddy Herron, has made an application for Public Safety Memorial Fund Benefits. The PSMF Board has determined that C/O Herron's death met the statutory definition of a qualifying death and that Mrs. Herron and her children are eligible recipients of the benefit. The lump sum benefit has been paid to Mrs. Herron and she has since filed a supplemental application requesting health and dental insurance reimbursement for herself and her 3 eligible children.

Our question is this: Mrs. Herron is also employed by the State and receives state insurance independent from her husband. At the time of her husband's death, their family was double-covered. ORS 243.956(5) states "If alternative coverage is not provided, the board may award benefits ... in an amount sufficient to allow the recipients to purchase health and dental insurance comparable to that provided by the public safety officer." We are struggling with the definition of "alternate coverage." Would Mrs. Herron be automatically disqualified from consideration because of the insurance coverage through her job qualifies as alternative coverage?

Linsay Hale  
Rules & Compliance Coordinator  
503-378-2431  
[linsay.hale@state.or.us](mailto:linsay.hale@state.or.us)

**243.956 Eligibility for benefits from fund; types of benefits.** (1) A person is eligible for an award of benefits from the Public Safety Memorial Fund if the person:

(a)(A) Is a family member, parent or designee of a public safety officer who has suffered a qualifying death or disability; or

(B) Is a public safety officer who has suffered a qualifying disability; and

(b) Has submitted an initial application for an award of benefits under ORS 243.958.

(2) Notwithstanding subsection (1) of this section, a person is not eligible for an award of benefits if:

(a) The person's actions were a substantial contributing factor to the qualifying death or disability of the public safety officer;

(b) The public safety officer's intentional misconduct caused the qualifying death or disability;

(c) The public safety officer intended to bring about the officer's qualifying death or disability;

(d) The public safety officer was voluntarily intoxicated at the time of the injury that caused the qualifying death or disability; or

(e) The public safety officer was performing the officer's duties in a grossly negligent manner at the time of the injury that caused the qualifying death or disability.

(3) If a person who is eligible for an award of benefits under subsection (1) of this section is younger than 18 years of age or is incompetent, another person may file the application for an award of benefits on behalf of the eligible person.

(4) Within 14 days after receipt of a notice under ORS 243.974 or entry of an order under ORS 243.964 awarding benefits based on an initial application, whichever occurs later, the Public Safety Memorial Fund Board shall pay a lump sum amount of \$25,000:

(a) If a designation of beneficiary form has been completed under ORS 243.974 (1), to the designee of a public safety officer who suffered a qualifying death;

(b) If a designation of beneficiary form has not been completed, in the manner described under ORS 243.969, to a family member or parent of a public safety officer who suffered a qualifying death; or

(c) To the public safety officer who suffered a qualifying disability.

(5) If alternative coverage is not provided, the board may award benefits to the family members of a public safety officer or, if a designation of beneficiary form has been completed under ORS 243.974 (1), to the designee, children and dependents of a public safety officer who has suffered a qualifying death or disability in an amount sufficient to allow the recipients to purchase health and dental insurance comparable to that provided by the public safety officer:

(a) For five years or until the spouse remarries, whichever occurs first;

(b) Until a child or a dependent attains 18 years of age or, if the child or the dependent is attending school, 23 years of age; and

(c) For five years for a designee who is not a person described in paragraph (a) or (b) of this subsection, or until the designee marries, whichever occurs first.

(6) If alternative coverage is not provided, the board may award benefits for five years to a public safety officer who has suffered a qualifying disability in an amount sufficient to allow the public safety officer to purchase health and dental insurance comparable to the health and dental insurance coverage that the public safety officer had immediately prior to the qualifying disability.

(7) The board may award benefits to an eligible spouse or designee of a public safety officer who has suffered a qualifying death or to a public safety officer who has suffered

a qualifying disability in an amount up to the equivalent of 12 monthly mortgage payments on the residence of the public safety officer or the spouse or designee of the public safety officer if there is no mortgage insurance to cover the cost.

(8)(a) The board may award scholarships for a graduate program of higher education to:

(A) A family member of a public safety officer who has suffered a qualifying death or disability;

(B) If a designation of beneficiary form has been completed under ORS 243.974 (1), to the designee, children and dependents of a public safety officer who suffered a qualifying death or disability; or

(C) To a public safety officer who has suffered a qualifying disability.

(b) In determining the amount of a scholarship, the board shall consider the person's financial need, the funds available in the Public Safety Memorial Fund and the anticipated demands on the fund. The board may not grant a scholarship in an amount exceeding the highest tuition charged by a public university listed in ORS 352.002 for a graduate program.

(9) A family member, a designee or a public safety officer is eligible to apply for a scholarship under subsection (8) of this section only if the family member, designee or public safety officer:

(a) Has exhausted the education benefits available under 28 C.F.R., Part 32, subpart B;

(b) Applies for the scholarship within one year from the date of exhaustion of the education benefits under paragraph (a) of this subsection; and

(c) Has applied for other available public education benefits.

(10) If a person described in subsection (8) of this section is ineligible to receive education benefits under 28 C.F.R., Part 32, subpart B, if funds for education benefits are unavailable under those provisions or if the education benefit program under those provisions no longer exists, the person may apply to the board for a scholarship for an undergraduate program. Scholarships for only undergraduate degrees may be awarded to a person under this subsection. The board may not grant a scholarship under this subsection in an amount exceeding the highest tuition charged by a public university listed in ORS 352.002 for an undergraduate program.

(11)(a) A person may apply for a scholarship under subsection (10) of this section at any time up to:

(A) Five years after the date on which the applicant graduated from high school if:

(i) The applicant was a minor at the time the public safety officer suffered a qualifying death or disability; and

(ii) An application for an award of some type of benefits was filed by a person described in subsection (8) of this section;

(B) The date the applicant remarries, if the applicant is the surviving spouse of a public safety officer who suffered a qualifying death, or the date the applicant divorces the public safety officer, if the applicant is the spouse of a public safety officer who suffered a qualifying disability; or

(C) Five years after the date of the injury that caused the disability, if the applicant is a public safety officer who suffered a qualifying disability or is a designee who is not a family member.

(b) The board may extend the time period for applying for a scholarship under subsection (10) of this section.

(12) If the family member, designee or public safety officer who is awarded a scholarship under this section is receiving other public education benefits, the amount of the scholarship awarded to the family member, designee or public safety officer shall be reduced by the amount of the other public education benefits. [1999 c.981 §5; 2001 c.493 §1; 2003 c.295 §2; 2007 c.378 §2; 2011 c.637 §80]