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OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – OPSRP DISABILITY BENEFIT

1 **459-076-0025**

2 **Application Processing — Independent Examinations and Appeals**

3 (1) Following the timely filing of a completed application, PERS may, at its
4 discretion, request an independent medical exam, physical capacity evaluation, or a
5 vocational evaluation. If PERS requests one or more of these exams or evaluations, PERS
6 will pay the reasonable associated expenses.

7 (a) For independent medical exams and physical capacity evaluations, PERS will
8 inform the applicant in writing and postmarked not less than 10 days before a scheduled
9 examination, of the identity of the physician[(s)] or other health practitioner selected
10 to examine applicant, together with location, date and time.

11 (b) For vocational evaluations, the vocational consultant or locator service shall
12 inform the applicant of the location, date and time of the scheduled examination.

13 (c) If the applicant fails to meet the scheduled appointment or fails to reschedule the
14 examination within five days of notification, PERS will not reschedule an examination at
15 PERS' expense unless the applicant can demonstrate good cause for having failed to meet
16 the scheduled appointment or reschedule the appointment as required.

17 (d) Good cause includes, but is not limited to:

18 (A) Physical or mental incapacitation preventing the member from meeting or
19 rescheduling the examination;

20 (B) Failure of PERS or the vocational consultant or locator service to send the
21 member notice as described above; or

22 (C) A death in the member's immediate family.

1 (e) Good cause does not include:

2 (A) A member’s refusal to attend the scheduled appointment;

3 (B) A member’s failure to meet the appointment with no reason provided; or

4 (C) A member’s failure to make appropriate transportation arrangements.

5 (2) When PERS requires an applicant to travel to be examined by a physician,
6 vocational consultant, or other health practitioner *[professional]*, PERS will reimburse
7 the applicant’s reasonable transportation costs based on the least costly alternative and on
8 availability. Travel by private vehicle will be compensated at the rate applicable to travel
9 by unrepresented state employees on state business. Transportation by taxi, bus, rail, or
10 other public carrier will be paid only upon presentation of receipts from the providers.

11 Lodging and subsistence will be allowed only when a stop-over is necessary and will be
12 paid at the rate applicable to unrepresented state employees traveling on state business.

13 Reimbursements will be reduced by the amount of any penalty assessed PERS because of
14 a member’s failure to meet a scheduled appointment.

15 (3) In the event a member fails to meet a scheduled examination in accordance with
16 section (1) of this rule, and PERS is assessed a penalty by the service provider for the
17 failure to meet the scheduled appointment, the disability applicant will bear the cost of
18 the penalty as follows:

19 (a) If the disability application is not approved, by making direct payment to the
20 service provider who assessed the penalty; or

21 (b) If the disability application is approved:

22 (A) By making direct payment to the service provider who assessed the penalty; or

1 (B) By having the amount of the penalty deducted from the monthly disability
2 benefit, as provided for under ORS 238.715, payable to the member until the invoice is
3 satisfied.

4 (4) The Director, or the Director’s designee, is hereby authorized to approve or deny
5 a disability benefit application. Upon receipt and review of all necessary documentation,
6 staff will present applicant’s claim to the Director, or the Director’s designee, with a
7 recommendation to approve or to deny a disability benefit. The Director, or the Director’s
8 designee, may accept or reject the staff’s recommendation, or refer the application back
9 to staff for further documentation and review.

10 (a) If the disability claim is approved, the staff will notify the applicant and the
11 applicant’s employer of such approval.

12 (b) If the disability claim is denied, the staff will issue an Intent to Deny letter by
13 regular and certified mail, return receipt requested. The Intent to Deny letter will advise
14 the applicant that additional information to substantiate the claim, or a request for an
15 extension of 30 days to present additional information, may be submitted to the staff in
16 writing within 30 days of the date of the Intent to Deny letter.

17 (5) Following the issuance of an Intent to Deny letter, staff will review any
18 additional information submitted within 30 days from the issuance of the Intent to Deny
19 letter.

20 (a) If the additional information results in a recommendation to approve the
21 application, staff will resubmit the application to the Director with the recommendation.

1 (b) If the additional information does not result in a recommendation to approve the
2 application, PERS will issue a final denial letter by regular and certified mail, return
3 receipt requested.

4 (c) If no additional information is received, PERS will issue a final denial letter by
5 regular and certified mail, return receipt requested.

6 (6) The final denial letter will provide the applicant with notification of the right to
7 request a contested case hearing as provided for in OAR 459-015-0030 and 459-001-
8 0035.

9 (7) A contested case hearing on the denial of disability benefits shall be conducted
10 according to OAR 459-015-0030, 459-015-0035, and ~~459-015-0040~~ [459-076-0040](#).

11 (8) PERS will notify the most recent employer of the approval or the denial of an
12 application for a disability benefit, a request for review of the Director's determination,
13 and the Director's final action. Such notification will not contain any confidential
14 information as defined in OAR 459-076-0001(3).

15 Stat. Auth.: ORS 238A.450

16 Stats. Implemented: ORS 238A.235