

Senator Hill, Representative Rotundo and members of the Joint Standing Committee on Appropriations and Financial Affairs, my name is John Milazzo, the General Counsel and CDED of the Maine Public Employees Retirement System. Kathy Morin and I have been asked to present a brief overview of the disability retirement program administered by MainePERS. We have prepared a brief presentation I would like to read with your permission.

The disability program is one of the benefits available to members of MainePERS. Eligible members with a long-term disability can receive an income benefit and at the same time continue to accrue creditable service while disabled.

The program is available to all members of MainePERS who became disabled while employed as a member of MainePERS. There is no “vesting” requirement that members have to meet before they are eligible to apply for disability retirement. In order to qualify for benefits, the member must establish the existence of a mental or physical condition that makes it permanently impossible for them to perform the essentially functions of their employment position, or a position of equal or comparable stature offered to them by their employer. Most members are covered under the “no-age” provision, which means they can apply for disability benefits at any age and receive a benefit equal to 59% of their average final compensation..

A member begins the disability retirement process by completing and filing an application. A disability specialist is assigned to each applicant and is available to assist them with the application. The specialist will obtain all relevant medical records from health care providers, hospitals and other treating professionals and conduct interviews with the member’s employer in order to gather information about how the member’s condition has impacted his or her ability to work. The

specialist will provide all medical documentation to the System's Medical Board, who will provide consultation addressing the condition, its associated functional limitations and the permanence of those limitations.

If a member's application for benefits is approved at the staff level, the member begins receiving benefits in the next month. The retiree's situation will then be reviewed every two years to determine if he or she continues to be disabled under the substantially gainful activity standard. The SGA standard for the continuation of benefits is different than the initial eligibility standard. Where, in order to qualify for benefits initially the member had to demonstrate that it was permanently impossible for them to perform the essential functions of their employment position, now the retiree must demonstrate that the condition still exists and that they are unable to engage in substantially gainful activity; essentially unable to earn 80% of their average final compensation adjusted for inflation. If the retiree is unable to demonstrate continuing disability, their benefits will nonetheless continue as long as they actively seek work. Actively seeking work requires the retiree to demonstrate at least 8 job seeking contacts per month.

If a disability retiree's medical condition permits, they can earn money while continuing to receive benefits. The amount they can earn without having to repay the System a portion or all of the disability benefits is limited by statute. Disability recipients who return to work in a non-MainePERS covered position are currently permitted to earn approximately \$22,000 per year or more, depending on their pre-disability salary, without having to repay the System. Disability recipients who return to MainePERS covered employment, such as back to work with their original employer, can earn an amount that, together

with their disability benefit, equals their average final compensation. Disability recipients are required by law to report their annual earnings to MainePERS.

If a member's application for disability is not approved, the member is advised orally of the System's reasons for the denial, provided copies of all documentation considered by the System in reaching its decision, and provided with information on how to appeal the decision to the System's Board of Trustees.

Once appealed, the case is assigned to an independent hearing officer. The hearing officer will hold a telephone conference with the member, the member's representative (who can be a non-lawyer) and the System's representative and set guidelines and time frames for the appeal. The member is provided the opportunity to submit additional medical evidence for consideration by the System and by the hearing officer, and can provide testimony before the hearing officer, along with the testimony of any witnesses. After consideration of all the evidence, the hearing officer provides the parties with a recommended decision and provides the opportunity for both parties to make comments. The hearing officer will consider all comments and then issue a recommended final decision, which must be adopted by the Board unless one or both parties demonstrate that the decision contains an error of law, the hearing officer exceeded his or her authority, or the decision is not supported by the record as a whole.

If a member alleges one of the above errors, the member is provided an opportunity to present his or her arguments to the Board of Trustees at one of the Board's regular monthly meetings. If the Board finds that none of the above errors exist, it must adopt the recommended final

decision of the hearing officer. The Board's adoption of the decision constitutes final agency action appealable to the court.

I would like to also let you know about the recently formed Disability Study Group. MainePERS staff has been meeting with stakeholders involved in the disability program and the appeals process since 2009. We were alerted to concerns by members of this group in the fall of 2013 about a number of issues they had relating to the disability and appeals processes. We held meetings with the stakeholders and ultimately decided that we should form a group to look at best practices for disability determination and appeal rights. The group consists of three employees of the System, three employee representatives and three employer representatives. The group has recently authorized the issuance of a request for proposals, seeking a third party consultant to identify areas of potential program modernization, industry best practices, cost savings and efficiencies and transparency, all in keeping with principles adopted by the Study Group. We will continue to update this Committee on progress.