

356.96 PENSION PLAN APPEAL PROCEDURES.

Subdivision 1. **Definitions.** (a) Unless the language or context clearly indicates that a different meaning is intended, for the purpose of this section, the terms in paragraphs (b) to (e) have the meanings given them.

(b) "Chief administrative officer" means the executive director of a covered pension plan or the executive director's designee or representative.

(c) "Covered pension plan" means a plan enumerated in section 356.20, subdivision 2, clauses (1) to (4), (10), and (13) to (16), but does not mean the deferred compensation plan administered under sections 352.965 and 352.97 or to the postretirement health care savings plan administered under section 352.98.

(d) "Governing board" means the Board of Trustees of the Public Employees Retirement Association, the Board of Trustees of the Teachers Retirement Association, or the Board of Directors of the Minnesota State Retirement System.

(e) "Person" includes an active, retired, deferred, or nonvested inactive participant in a covered pension plan or a beneficiary of a participant, or an individual who has applied to be a participant or who is or may be a survivor of a participant, or a state agency or other governmental unit that employs active participants in a covered pension plan.

Subd. 2. **Right to review.** A determination made by the administration of a covered pension plan regarding a person's eligibility, benefits, or other rights under the plan with which the person does not agree is subject to review under this section.

Subd. 3. **Notice of determination.** If the applicable chief administrative officer denies an application or a written request, modifies a benefit, or terminates a benefit of a person claiming a right or potential rights under a covered pension plan, the chief administrative officer shall notify that person through a written notice containing:

(1) a statement of the reasons for the determination;

(2) a notice that the person may petition the governing board of the covered pension plan for a review of the determination and that a person's petition for review must be filed in the administrative office of the covered pension plan within 60 days of the receipt of the written notice of the determination;

(3) a statement indicating that a failure to petition for review within 60 days precludes the person from contesting in any other administrative review or court procedure the issues determined by the chief administrative officer;

(4) a statement indicating that all relevant materials, documents, affidavits, and other records that the person wishes to be reviewed in support of the petition must be filed with and received in the administrative office of the covered pension plan at least 30 days before the date of the hearing under subdivision 10; and

(5) a copy of this section.

Subd. 4. Termination of benefits. (a) If a covered pension plan decides to terminate a benefit that is being paid to a person, before terminating the benefit, the chief administrative officer must, in addition to the other procedures prescribed in this section, provide the individual with written notice of the pending benefit termination by certified mail. The notice must explain the reason for the pending benefit termination. The person must be given an opportunity to explain, in writing, in person, by telephone, or by e-mail, the reasons that the benefit should not be terminated.

(b) If the chief administrative officer is unable to contact the person and determines that a failure to terminate the benefit will result in unauthorized payment by a covered pension plan, the chief administrative officer may terminate the benefit immediately upon mailing a written notice containing the information required by subdivision 3 to the address to which the most recent benefit payment was sent and, if that address is that of a financial institution, to the last known address of the person.

Subd. 5. Petition for review. (a) A person who claims a right under subdivision 2 may petition for a review of that decision by the governing board of the covered pension plan.

(b) A petition under this section must be sent to the chief administrative officer by mail and must be postmarked no later than 60 days after the person received the notice required by subdivision 3. The petition must include the person's statement of the reason or reasons that the person believes the decision of the chief administrative officer should be reversed or modified. The petition may include all documentation and written materials that the petitioner deems to be relevant. In developing a record for review by the board when a decision is appealed, the executive director may direct that the applicant participate in a fact-finding session conducted by an administrative law judge assigned by the Office of Administrative Hearings and, as applicable, participate in a vocational assessment conducted by a qualified rehabilitation counselor on contract with the applicable retirement system.

Subd. 6. Failure to petition. If a timely petition for review under subdivision 5 is not filed with the chief administrative officer, the covered pension plan's determination is final and is not subject to further administrative or judicial review.

Subd. 7. Notice of hearing. (a) After receiving a petition, and not less than 30 calendar days from the date of the next regular board meeting, the chief administrative officer must schedule

a timely review of the petition before the governing board of the covered pension plan. The review must be scheduled to take into consideration any necessary accommodations to allow the petitioner to participate in the governing board's review.

(b) Not less than 15 calendar days before the scheduled hearing date, the chief administrative officer must provide by mail to the petitioner an acknowledgment of the receipt of the person's petition and a follow-up notice of the time and place of the meeting at which the governing board is scheduled to consider the petition and must provide a copy of all relevant documents, evidence, summaries, and recommendations assembled by or on behalf of the plan administration to be considered by the governing board.

(c) Except as provided in subdivision 8, paragraph (c), all documents and materials that the petitioner wishes to be part of the record for review must be filed with the chief administrative officer and must be received in the offices of the covered pension plan at least 30 days before the date of the meeting at which the petition is scheduled to be heard.

(d) A petitioner, within ten calendar days of the scheduled date of the applicable board meeting, may request a continuance on a scheduled petition. The chief administrative officer must reschedule the review within 60 days of the date of the continuance request. Only one continuance may be granted to any petitioner.

Subd. 8. Record for review. (a) All evidence, including all records, documents, and affidavits in the possession of the covered pension plan of which the covered pension plan desires to avail itself and be considered by the governing board, and all evidence which the petitioner wishes to present to the governing board, including any evidence which would otherwise be classified by law as "private," must be made part of the hearing record.

(b) Not later than seven days before the scheduled hearing date, the chief administrative officer must provide a copy of the record to each member of the governing board.

(c) At least five days before the hearing, the petitioner may submit to the chief administrative officer, for submission to the governing board, any additional document, affidavit, or other relevant information that was not initially submitted with the petition.

Subd. 9. Amended determination. At any time before the hearing before the governing board, for good cause shown and made part of the records of the plan, the chief administrative officer may reverse, alter, amend, or modify the prior decision which is subject to review under this section by issuing an amended decision. Upon doing so, the chief administrative officer may cancel the governing board's scheduled review of the person's petition and shall so notify the petitioner.

Subd. 10. **Hearing.** (a) The governing board shall hold a timely hearing on a petition for review as part of a regularly scheduled board meeting, or as part of a special meeting if so scheduled. All governing board members who participate in the decision-making process must be familiar with the record. The governing board shall make its decision on a petition solely on the record as submitted and on the proceedings of the hearing. At the hearing, the petitioner, the petitioner's attorney, and the chief administrative officer may state and discuss with the governing board their positions with respect to the petition. The governing board may allow further documentation to be placed in the record at the board meeting only with the agreement of both the chief administrative officer and the petitioner. The chief administrative officer may not otherwise participate in the board's decision-making process.

(b) When a petition presents a contested issue of law, an assistant attorney general may participate and may argue on behalf of the legal position taken by the chief administrative officer if that assistant attorney general does not also serve as the governing board's legal advisor during the board's decision-making process.

(c) A motion by a board member, supported by a summary of the relevant facts, conclusions and reasons, as properly amended and approved by a majority of the governing board, constitutes the board's final decision. A verbatim statement of the board's final decision must be served upon the petitioner. If the decision is contrary to the petitioner's desired outcome, the notice shall inform the petitioner of the appeal rights set forth in subdivision 13.

(d) If a petitioner who received timely notice of a scheduled hearing fails to appear, the governing board may nevertheless hear the petition and issue a decision.

Subd. 11. **Disability medical issues.** (a) If a person petitions the governing board to reverse or modify a determination which found that there exists no medical data supporting an application for disability benefits, the board may reverse that determination only if there is in fact medical evidence supporting the application. The board has the discretion to resubmit a disability benefit application at any time to a medical advisor for reconsideration, and the resubmission may include an instruction that further medical examinations be obtained.

(b) The governing board may make a determination contrary to the recommendation of the medical advisor only if there is expert medical evidence in the record to support its contrary decision. If there is no medical evidence contrary to the opinion of the medical advisor in the record and the medical advisor attests that the decision was made in accordance with the applicable disability standard, the board must follow the decision of the medical advisor regarding the cause of the disability.

(c) The obligation of the governing board to follow the decision of the medical advisor under paragraph (b) does not apply to instances when the governing board makes a determination different from the recommendation of the medical advisor on issues that do not involve medical issues.

Subd. 12. **Referral for administrative hearing.** (a) Notwithstanding any provision of sections 14.03, 14.06, and 14.57 to 14.69 to the contrary, a challenge to a determination of the chief administrative officer of a covered pension plan must be conducted exclusively under the procedures set forth in this section and is not a contested case under chapter 14.

(b) Notwithstanding the provisions of paragraph (a), a governing board, in its sole discretion, may refer a petition brought under this section to the Office of Administrative Hearings for a contested case hearing under sections 14.57 to 14.69.

Subd. 13. **Appeal of the governing board's decision; judicial review.** Within 60 days of the date of the mailing of the notice of the governing board's decision, the petitioner may appeal the decision by filing a writ of certiorari with the Court of Appeals under section 606.01 and Rule 115 of the Minnesota Rules of Civil Appellate Procedure. Failure by a person to appeal to the Court of Appeals within the 60-day period precludes the person from later raising, in any subsequent administrative hearing or court proceeding, those substantive and procedural issues that reasonably should have been raised upon a timely appeal.

Subd. 14. **Petitions without notice.** Notwithstanding the petition notice and requirements under this section, a person who believes that the person's rights have been affected by a decision made by the administration of a covered pension plan may request a review under this section by the appropriate governing board. The petition under this subdivision must be made within 45 days of the time that the person knew or should have known of the disputed decision.

Subd. 15. **Governing board review panel.** Any covered pension plan subject to this section, by motion duly made and adopted, may appoint a panel of governing board members to hear and determine any or all petitions brought under this section. The governing board review panel must contain a minimum number of board members that would otherwise constitute a quorum of board members under the governing body's rules and procedures.

History: 2007 c 134 art 6 s 2; 2008 c 349 art 10 s 16; art 11 s 7; 2009 c 169 art 4 s 47; art 9 s 28