

**353.031 DISABILITY DETERMINATION PROCEDURES.**

Subdivision 1. **Application.** This section applies to all disability determinations for the public employees general fund, the public employees police and fire fund, and the local government correctional service retirement plan and any other disability determination subject to approval by the board, except as otherwise specified in section 353.33, 353.656, or 353E.05. These requirements and the requirements of section 353.03, subdivision 3, are in addition to the specific requirements of each plan and govern in the event there is any conflict between these sections and the procedures specific to any of those plans under section 353.33, 353.656, or 353E.06.

Subd. 2. **Plan document policy statement.** Disability determinations for the public employees general fund must be made subject to section 353.01, subdivision 19; and for the police and fire plan and the local government correctional service retirement plan must be made consistent with the legislative policy and intent set forth in section 353.63.

Subd. 3. **Procedure to determine eligibility; generally.** (a) Every claim for a disability benefit must be initiated in writing on an application form and in the manner prescribed by the executive director and filed with the executive director. An application for disability benefits must be made within 18 months following termination of public service as defined under section 353.01, subdivision 11a.

(b) All medical reports must support a finding that the disability arose before the employee was placed on any paid or unpaid leave of absence or terminated public service, as defined under section 353.01, subdivision 11a.

(c) An applicant for disability shall provide a detailed report signed by a licensed medical doctor and at least one additional report signed by a medical doctor, psychologist, or chiropractor. The applicant shall authorize the release of all medical and health care evidence, including all medical records and relevant information from any source, to support the application for initial, or the continuing payment of, disability benefits.

(d) All reports must contain an opinion regarding the claimant's prognosis, the duration of the disability, and the expectations for improvement. Any report that does not contain and support a finding that the disability will last for at least one year may not be relied upon to support eligibility for benefits.

(e) Where the medical evidence supports the expectation that at some point in time the claimant will no longer be disabled, any decision granting disability may provide for a termination date upon which disability can be expected to no longer exist. In the event a termination date is made part of the decision granting benefits, prior to the actual termination of benefits, the claimant shall have the opportunity to show that the disabling condition for which benefits were initially granted continues. In the event the benefits terminate in accordance with the original decision, the claimant may petition for a review by the board of trustees under section 353.03, subdivision 3, or may reapply for disability in accordance with these procedures and section 353.33, 353.656, or 353E.06, as applicable.

(f) Any claim to disability must be supported by a report from the employer indicating that there is no available work that the employee can perform in the employee's disabled condition and that all reasonable accommodations have been considered. Upon request of the executive director, an employer shall provide evidence of the steps the employer has taken to attempt to provide reasonable accommodations and continued employment to the claimant. The employer

shall also provide a certification of the member's past public service; the dates of any paid sick leave, vacation, or any other employer-paid salary continuation plan beyond the last working day; and whether or not any sick or annual leave has been allowed.

(g) An employee who is placed on leave of absence without compensation because of a disability is not barred from receiving a disability benefit.

(h) An applicant for disability benefits may file a retirement annuity application under section 353.29, subdivision 4, simultaneously with an application for disability benefits. If the application for disability benefits is approved, the retirement annuity application is cancelled. If disability benefits are denied, the retirement annuity application must be processed upon the request of the applicant. No member of the public employees general plan, the public employees police and fire plan, or the local government correctional service retirement plan may receive a disability benefit and a retirement annuity simultaneously from the same plan.

**Subd. 4. Additional requirements; eligibility for police and fire or local government correctional service plan disability benefits.** (a) If an application for disability benefits is filed within two years of the date of the injury or the onset of the illness that gave rise to the disability application, the application must be supported by evidence that the applicant is unable to perform the duties of the position held by the applicant on the date of the injury or the onset of the illness causing the disability. The employer must provide evidence indicating whether the applicant is able or unable to perform the duties of the position held on the date of the injury or onset of the illness causing the disability and the specifications of any duties that the individual can or cannot perform.

(b) If an application for disability benefits is filed more than two years after the date of injury or the onset of an illness causing the disability, the application must be supported by evidence that the applicant is unable to perform the most recent duties that are expected to be performed by the applicant during the 90 days before the filing of the application. The employer must provide evidence of the duties that are expected to be performed by the applicant during the 90 days before the filing of the application, whether the applicant can or cannot perform those duties overall, and the specifications of any duties that the applicant can or cannot perform.

(c) Any report supporting a claim to disability benefits under section 353.656 or 353E.06 must specifically relate the disability to its cause; and for any claim to duty disability from an injury or illness arising out of an act of duty, the report must relate the cause of disability to specific tasks or functions required to be performed by the employee in fulfilling the employee's duty-related acts which must be specific to the inherent dangers of the positions eligible for membership in the police and fire fund and the local government correctional service retirement plan. Any report that does not relate the cause of disability to specific acts or functions performed by the employee may not be relied upon as evidence to support eligibility for benefits and may be disregarded in the executive director's decision-making process.

(d) Any application for duty disability must be supported by a first report of injury as defined in section 176.231.

(e) If a member who has applied for and been approved for disability benefits before the termination of service does not terminate service or is not placed on an authorized leave of absence as certified by the governmental subdivision within 45 days following the date on which the application is approved, the application shall be canceled. If an approved application for disability benefits has been canceled, a subsequent application for disability benefits may not be

filed on the basis of the same medical condition for a minimum of one year from the date on which the previous application was canceled.

Subd. 5. **Medical adviser.** The executive director may contract with licensed physicians or physicians on the staff of the state commissioner of health, as designated by the commissioner, to be the medical adviser of the association. The medical adviser shall review all medical reports submitted to the association, including the findings of an independent medical examination requested under this section, and shall advise the executive director.

Subd. 6. **Independent medical examination.** Any individual applying for or receiving disability benefits must submit to an independent medical examination if requested by the executive director. The medical examination must be paid for by the association.

Subd. 7. **Refusal of examination or medical evidence.** If a person applying for or receiving a disability benefit refuses to submit to a medical examination under subdivision 6, or fails to provide or to authorize the release of medical evidence under subdivision 3, the association shall cease the application process or shall discontinue the payment of a disability benefit, whichever is applicable. Upon the receipt of the requested medical evidence, the association shall resume the application process or the payment of a disability benefit upon approval for the continuation, whichever is applicable.

Subd. 8. **Proof of continuing disability.** (a) A disability benefit payment must not be made except upon adequate proof furnished to the executive director of the association that the person remains disabled.

(b) During the time when disability benefits are being paid, the executive director of the association has the right, at reasonable times, to require the disabled member to submit proof of the continuance of the disability claimed.

(c) Adequate proof of a disability must include a written expert report by a licensed physician, a licensed chiropractor, or, with respect to a mental impairment, a licensed psychologist.

Subd. 9. **Application approval or denial; decision of executive director.** Any decision of the executive director is final, except that a member whose application for disability benefits or whose continuation of disability benefits is denied may appeal the executive director's decision to the board of trustees within 60 days of receipt of a certified letter notifying the member of the decision to deny the application or continuation of benefits. In developing the 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, a vocational assessment conducted by the qualified rehabilitation counselor on contract with the Public Employees Retirement Association.

Subd. 10. **Restoring forfeited service.** To restore forfeited service, a repayment of a refund must be made within six months after the effective date of disability benefits or within six months after the date of the filing of the disability application, whichever is later. No purchase of prior service or payment made in lieu of salary deductions otherwise authorized under section 353.01 may be made after the occurrence of the disability for which an application is filed under this section.

**History:** 2007 c 134 art 4 s 8