# WEST VIRGINIA CODE: §15-2-31A

**§15-2-31a. Application for disability benefit; determinations.**

(a) Application for a disability benefit may be made by a member under the provisions of section twenty-nine of this article, by an employee under the provisions of section thirty of this article or, if the member or employee is under an incapacity, by a person acting with legal authority on the member's or the employee's behalf. After receiving an application for a disability benefit, the board shall notify the superintendent of the agency that an application has been filed: Provided, That when, in the judgment of the superintendent, an employee is no longer physically or mentally fit for continued duty as an employee of the West Virginia State Police and the employee has failed or refused to make application for disability benefits under this article, the superintendent may petition the board to retire the employee on the basis of disability pursuant to rules which may be established by the board. Within thirty days of the superintendent's receipt of the notice from the board or the filing of the superintendent's petition with the board, the superintendent shall forward to the board a statement certifying the duties of the employee's employment, information relating to the superintendent's position on the work relatedness of the employee's alleged disability, complete copies of the employee's medical file and any other information requested by the board in its processing of the application, if this information is requested timely.

(b) The board shall propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code relating to the processing of applications and petitions for disability retirement under this article.

(c) The board shall notify the member and the superintendent of its final action on the disability application or petition within ten days of the board's final action. The notice shall be sent by certified mail, return receipt requested. If either the member or the superintendent is aggrieved by the decision of the board and intends to pursue judicial review of the board's decision as provided in section four, article five, chapter twenty-nine-a of this code, the party so aggrieved shall notify the board within twenty days of the member's or superintendent's receipt of the board's notice that they intend to pursue judicial review of the board's decision.

(d)(1) The board shall require each disability benefit recipient to file an annual certified statement of earnings, to include the amount and source of earnings and any other information required in legislative rules which may be proposed by the board. The board may waive or modify the requirement that a recipient of total disability benefits file the annual statement of earnings if the board's physician certifies that the recipient's disability is ongoing. The board shall annually examine the information submitted by each recipient. If a disability retirant refuses to file a statement and other information required by the board, the disability benefit shall be suspended, after notice and opportunity to be heard, until the statement and information are filed.

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(2) The board shall annually examine any information available from the State Tax Commissioner on all recipients of disability benefits pursuant to article ten, chapter eleven of this code.

(e)(1) A nonblind recipient earning annual income exceeding the equivalent of $860 per month in the year two thousand six, after impairment-related work expenses are subtracted from earnings, has engaged in substantial gainful activity. A statutorily blind recipient has engaged in substantial gainful activity in the year two thousand six if the recipient has earned annual income exceeding the equivalent of $1,450 per month after impairment-related work expenses are subtracted from earnings.

(2) The substantial gainful activity dollar limit shall be automatically adjusted annually to correspond to the dollar limit as established and published by the United States Social Security Administration for each year in accordance with methods published in the Federal Register (FR6582905 December 29, 2000) and similar methods used by the Social Security Administration applying the average annual wage index.

(3) If after review of a disability retirant's annual statement of earnings, tax records or other financial information, as required or otherwise obtained by the board, the board determines that earnings of the recipient of total disability benefits in the preceding year are sufficient to show that the recipient engaged in substantial gainful activity, the disability retirant's disability annuity shall be terminated by the board, upon recommendation of the board's disability review committee and after notice and opportunity to be heard, on the first day of the month following the board's action.

(4) If the board obtains information that a recipient of partial disability benefits is employed as a law-enforcement officer, upon recommendation of the board's disability review committee and after notice and an opportunity to be heard, the board shall terminate the recipient's disability benefits on the first day of the month following the board's action.

(f) Any person who wishes to reapply for disability retirement and whose disability retirement has been terminated by the board pursuant to this section may do so within ninety days of the effective date of termination: Provided, That any person reapplying for disability benefits shall undergo an examination at the applicant's expense by an appropriate medical professional selected by the board as part of the reapplication process.

(g) Notwithstanding other provisions in this section, any person whose disability retirement has been terminated by the board pursuant to this section may apply for regular retirement benefits upon meeting the eligibility requirements of age and years of service.

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