WEST VIRGINIA CODE: §15-2A-11A

§15-2A-11a. Physical examinations of prospective members; application for disability benefit; determinations.

(a) Not later than thirty days after an employee becomes a member of the fund, the employer shall forward to the board a copy of the physician's report of a physical examination which incorporates the standards or procedures described in section seven, article two, chapter fifteen of this code. A copy of the physicians's report shall be placed in the employee's retirement system file maintained by the board.

(b) Application for a disability benefit may be made by an employee or, if the employee is under an incapacity, by a person acting with legal authority on 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 agency 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 legislative rules proposed in accordance with article three, chapter twenty-nine-a of this code. 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 job description, 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.

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

(d) The board shall notify an employee 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 employee 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 aggrieved shall notify the board within twenty days of the employee's or superintendent's receipt of the board's notice that they intend to pursue judicial review of the board's decision.

(e) The board may require a disabled retirant to file an annual statement of earnings and any other information required in rules which may be adopted by the board. The board may waive the requirement that a disabled retirant 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 the disabled retirant. If a disabled retirant refuses to

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file the statement or information, the disability benefit shall be suspended until the statement and information are filed.

(f) 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, on the first day of the month following the board's action.

(g) If the board obtains information that a partially disabled disability retirant is employed as a law-enforcement officer, the disability retirant's disability annuity shall be terminated by the board, upon recommendation of the board's disability review committee, the first day of the month following the board's action.

(h) 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.

(I) 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 eligibility requirements of age and years of service.

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