WEST VIRGINIA CODE: §8-22-23A

§8-22-23a. Eligibility for total and temporary disability pensions and total and permanent disability pensions; reporting; light duty.

(a) All members applying for total and temporary or total and permanent disability benefits after June 30, 1981, shall be examined by at least two physicians under the direction of the staff at Marshall University, West Virginia University, Morgantown, or West Virginia University, Charleston: *Provided*, That if a member's medical condition cannot be agreed on by the two physicians, a third physician shall examine the member: *Provided, however*, That beginning January 1, 2010, and continuing thereafter, a member applying for total and temporary or total and permanent disability benefits shall be examined by two physicians, one of which shall be chosen and paid by the member, and one of which shall be chosen and paid by the oversight board. If the two physicians disagree, the oversight board shall select and pay for a third examining physician: *Provided further*, That starting July 1, 2023, and continuing thereafter, the physician(s) chosen by the oversight board to perform the independent medical examination(s) may perform an in-person or virtual examination of a member's physical or mental health, or both, or at the discretion of the oversight board, a medical record review of the member's physical or mental health, or both. The selection of the method of examination is at the discretion of the oversight board in consultation with the physician.

(1) Disability benefits shall be awarded if in the opinion of two of the examining physicians the member is by reason of the disability unable to perform adequately the job duties required.

(2) Each medical examination shall include the review of the member's medical history, but an examining physician may not have access to the disability examination report or disability recommendation of another physician.

(3) The physicians shall send copies of their reports to both the board of trustees of the member's pension and relief fund and the oversight board.

(4) The expense of the member's transportation to medical examinations shall be paid by the board of trustees. Medical expense shall not exceed the reasonable and customary charges for similar services.

(5) Beginning January 1, 2010, and thereafter, if a member is charged with an offense that has the potential to lead to the member's termination, the member's municipal pensions and relief fund board of trustees may not consider the member's eligibility for disability benefits until after investigation of the charge is completed and any disciplinary decision is implemented.

(6) No later than January 1, 2011, and annually thereafter, each board of trustees shall

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report to the oversight board the total number of disability applications received during the prior fiscal year, the status of each application as of the end of the fiscal year, total applications granted and denied, and the percentage of disability-benefit recipients to the total number of active members of the fund.

(b) Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, initially or previously under this subsection allowance for initial or additional total and temporary disability payments, the amount thereof to be determined as specified in section twenty-four of this article shall be paid to the member during the disability for a period not exceeding 26 weeks if after a medical examination in accordance with subsection (a) of this section two examining physicians report in writing to the board of trustees that: (1) The member has become so totally, physically or mentally disabled, from any reason, as to render the member totally, physically or mentally, incapacitated for employment as a police officer or firefighter; and (2) it has not been determined if the disability is permanent or it has been determined that the disability may be alleviated or eliminated if the member follows a reasonable medical treatment plan or reasonable medical advice: *Provided*, That, in any event, a member is not eligible for total and temporary disability payments following the fourth consecutive 26-week period of total and temporary disability unless subsequent disability results from a cause unrelated to the cause of the four previous periods of total and temporary disability. During the two-year period of total and temporary disability, the department is required to restore the member to his or her former position in the department at any time the member is determined to no longer be disabled: *Provided, however*, That the department may refill, on a temporary basis, the position vacated by the member after the first 26 weeks of his or her temporary disability.

(c) Effective for members becoming eligible for total and permanent disability benefits initially under this subsection or becoming eligible for total and temporary disability benefits under subsection (b) of this section after June 30, 1981, allowance for total and permanent disability payments, the amount thereof to be determined as specified in section twenty-four of this article, shall be paid to the member after a medical examination in accordance with subsection (a) of this section, two examining physicians report in writing to the board of trustees that the member has become so totally, physically or mentally, and permanently disabled, as a proximate result of service rendered in the performance of his or her duties in the department, as to render the member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter or, if the member has been a member of either of the departments for a period of not less than five consecutive years preceding the disability, the member has become so totally, physically or mentally, and permanently disabled, from any reason other than service rendered in the performance of his or her duties in the department, as to render the member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter. The phrase "totally, physically or mentally, and permanently disabled" shall not be construed to include a medical condition which may be corrected if the member follows a reasonable medical treatment plan or reasonable medical advice.

(d) Effective for members becoming eligible for total and temporary disability benefits after

June 30, 1981, under the provisions of subsection (b) of this section, any payments for total and temporary disability for a period during the disability not exceeding 26 weeks shall cease at the end of the 26-week period under the following conditions:

(1) The member fails to be examined as provided in subsection (a) of this section; or (2) the member is examined or reexamined as provided in said subsection and two examining physicians report to the board of trustees that the member's medical condition does not meet the requirements of subsection (b) or (c) of this section. Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, under subsection (b) of this section, subsequent to the member's receipt of total and temporary disability payments for a period of two years, the payments shall cease at the end of the two-year period under the following conditions: (A) The member fails to be examined as provided in subsection (a) of this section; or (B) the member is examined or reexamined as provided in said subsection and two examining physicians report to the board of trustees that the member's medical condition does not meet the requirements of subsection (c) of this section.

(e) Notwithstanding other provisions of this section to the contrary, a member of a municipal policemen's or firemen's pension and relief fund who is found to be disabled from performing the full range of tasks relevant to police officer or firefighter employment, but capable of performing a restricted or light-duty police officer or firefighter job made available at the discretion of the employing municipality may choose to continue working and retain an active membership in his or her pension and relief fund.

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