

This amended rule version of 742-3-10 is pending approval by JCARR.

742-3-10 Annual medical examinations, termination of benefits and appeal of terminations.

(A) Waiver of annual medical examination requirement

(1) For those members who are subject to the terms of division (C)(2)(a) of section 742.40 of the Revised Code (i.e., a disability benefit recipient who has been a member of Ohio police and fire pension fund (“OP&F”) for less than twenty-five years and has not attained age forty-eight), such disability benefit recipient shall, ~~if the person has not undergone any required annual medical evaluations prior to that date,~~ submit to an annual medical examination by OP&F's physician, unless the ~~board's~~ DEP Medical Advisor certifies that a disability benefit recipient's disability is ongoing and the board waives the requirement that the disability benefit recipient undergo an annual medical examination.

(2) If the requirement that a disability benefit recipient undergo an annual medical examination by an OP&F physician is waived, the recipient shall thereafter be relieved from submitting to an annual medical examination until otherwise notified in writing by OP&F. However, any waiver granted shall not waive any rights the board may have to request a medical examination in accordance with the terms of division (C)(2)(b) of section 742.40 of the Revised Code.

(B) Annual medical examinations

~~From and after January 1, 1999, for~~ For a disability benefit recipient who has been requested by the board to undergo a medical examination pursuant to the terms of division (C)(2)(a) or division (C)(2)(b) of section 742.40 of the Revised Code:

(1) ~~The board or the fund~~ OP&F shall notify ~~such the~~ such the disability benefit recipient of the need to schedule ~~such the~~ such the medical examination ~~through OP&F~~ and ~~OP&F shall~~ provide the disability benefit recipient with at least thirty days prior written notice of the time and place of the scheduled examination.

(2) Unless for good cause shown, the disability benefit recipient shall be presumed to have refused to submit to the medical examination by an OP&F physician; if OP&F has scheduled such examinations three times and ~~such the~~ such the disability benefit recipient has either canceled, rescheduled, or failed to submit to ~~such the~~ such the scheduled medical examinations, as documented by ~~the fund's~~ OP&F's books and records.

(3) The refusal of a disability benefit recipient to submit to the medical examination requested pursuant to the terms of division (C)(2)(a) or division (C)(2)(b) of section 742.40 of the Revised Code, whether documented by OP&F's books and records or as presumed under the terms of paragraph (B)(2) of this rule, shall result in the suspension of disability benefits and any health care or prescription benefits selected by the disability benefit recipient, ~~if any,~~ upon ninety days prior written notice to the disability benefit recipient and shall continue until compliance.

(a) If the disability benefit recipient has not submitted to the medical examination by an OP&F physician within the aforementioned ninety-day notice period, the suspension of disability benefits and any health care or prescription drug benefits selected by the disability benefit recipient, ~~if any,~~ shall be effective on the first day of the month immediately following the expiration of the ~~aforementioned~~ ninety-day notice period.

(b) In the event the disability benefit recipient submits to the required medical examination by an OP&F physician after the ~~aforementioned~~ ninety-day notice period, ~~the fund~~ OP&F will reinstate the recipient's disability benefits and any health care or prescription drug benefits selected by the disability benefit recipient, ~~if any,~~ on the first day of the month immediately following the disability benefit recipient's submission to the required medical examination. ~~and the~~ The recipient shall be entitled to retroactive coverage of disability benefits and health care or prescription drug benefits selected by the disability benefit recipient, ~~if any,~~ during that time in which the benefits were suspended, ~~subject to the terms of rule 742-7-06 of the Administrative Code.~~ Notwithstanding the reinstatement of disability benefits and health care or prescription drug benefits selected by the disability benefit recipient, ~~if any,~~ upon compliance, OP&F shall not be obligated to restore the identical benefits previously provided to the disability benefit recipient; if such benefits are not available at the time of such disability benefit recipient's reinstatement of health care or prescription drug expenses, ~~and,~~ OP&F shall not be obligated to pay for certain health care or prescription drug expenses that were incurred from and after the date of the member's suspension. ~~In such event, OP&F, and~~ shall ~~also~~ not be responsible for any additional out-of-pocket expenses and deductibles incurred by the disability benefit recipient arising out of such replacement benefits.

~~(c) Notwithstanding the terms of the foregoing paragraph (B)(3)(b) of this rule,~~ OP&F shall not, however, suspend dental and vision benefits of such non-complying disability benefit recipient ~~provided and for so~~ as long as the disability benefit recipient pays the monthly costs of such benefits in advance to OP&F within thirty days after OP&F sends an invoice to the disability benefit recipient.

~~(c) If the refusal of a disability benefit recipient to submit to any medical examination under section 742.40 of the Revised Code continues for one year, whether documented by OP&F's books and records or as presumed under the terms of this rule, then the disability benefit recipient's disability benefits and any healthcare or prescription drug benefits shall be forfeited, as required by division (C)(2)(c) of section 742.40 of the Revised Code, effective as of the date of the original suspension. OP&F shall notify the disability benefit recipient by certified mail, return receipt requested of the termination of benefits and the date that his or her benefits shall be terminated.~~

~~(C) Board's concurrence in physician's certification that recipient no longer meets disability standards~~

~~(1) For those disability benefit recipients who undergo the medical examination pursuant to division (C) of section 742.40 of the Revised Code, the board will review the physician's report and if it. If the board concurs with the physician's certification that the recipient is physically and mentally capable of resuming employment similar to that from which the recipient was~~

~~found disabled as referenced in division (C) of former section 742.3720 of the Revised Code or that the recipient no longer meets the disability standards set forth in division (D)(1), (D)(2), (D)(3), or (D)(4) of section 742.38 of the Revised Code or division (C)(2), (C)(3), or (C)(5) of former section 742.37 of the Revised Code, as referenced in division (C)(2)(c) of section 742.3720 of the Revised Code,~~ the disability benefits shall terminate ninety days after the board concurs with the physician's certification or upon employment by the benefit recipient as a police officer or firefighter, as defined in Administrative Rule 742-3-20.

~~(D) (2) For those determinations made by the board under paragraph (C) of this rule relating to physician certification, the OP&F shall notify the disability benefit recipient shall be advised by certified mail, return receipt requested of the board's concurrence with the physician's certification and of, the date that his or her benefit shall be terminated. The disability benefit recipient will also be notified, and~~ of his or her right to appeal.

~~(E)~~ (D) Appeal of the board's concurrence with physician certification

(1) In order to appeal any determinations of the board under paragraph ~~(D)~~ (C) of this rule, the disability benefit recipient ~~must shall~~ file ~~a written notice of appeal with the fund~~ the notice of disability appeal form provided by OP&F within ninety days of receipt of ~~the OP&F's~~ notice ~~referred to in paragraph (D) above~~ of termination of benefits. The notice of appeal ~~must shall~~ contain the member's name, the last four digits of the member's social security number, and a brief description of the decision upon which the appeal is based, ~~and the reason(s) why decision is being appealed.~~

~~(F)~~ (2) Within sixty days of the filing of the notice of appeal, ~~referred to in paragraph (E) of this rule,~~ the appellant ~~must file with the board~~ shall submit to OP&F all materials ~~which he or she desires to submit~~ in support of the appeal including, but not limited to, medical records, doctors' reports, and documentation substantiating earnings and income. Failure to submit supporting materials will be sufficient cause for the director of member services to dismiss the appeal provided OP&F gives the member prior written notice of such dismissal and a deadline date by which all materials must be filed with OP&F, and the member fails to file the required documentation with OP&F before the designated deadline.

(3) ~~The board will~~ OP&F shall schedule the appeal hearing after receipt of appellant's supporting materials and give the appellant reasonable notice of the date, time, and place thereof in writing. The appellant shall be given the opportunity to be present, with counsel or other representation if he or she chooses, at the hearing. ~~Benefits shall be terminated pending appeal if a favorable decision on the appeal is not made within ninety days of the board's concurrence with the physician's certification. A recording of the hearing will be made to provide the board and the Medical Advisor with a record for further review. Such recording of the hearing shall be available to the disability applicant and to those individuals who are authorized by the disability applicant to receive such information on the authorization to release medical records form provided by OP&F.~~

(4) Following the hearing on appeal, the board may choose to:

(a) Affirm the original concurrence in the physician's certification;

(b) Reverse the original concurrence in the physician's certification; or

(c) Postpone a decision pending additional examinations or documentation.

The board's decision on appeal shall be the final determination of the member's disability.

(5) The applicant shall be advised of the board's action within thirty days after the board's determination and such notice shall be sent by certified mail, return receipt requested.

(6) Benefits shall be terminated pending appeal if a favorable decision on the appeal is not made within ninety days of the board's concurrence with the physician's certification.

~~(G) Once a waiver has been granted by the board to a disability benefit recipient who is subject to the terms of division (C)(2)(a) of section 742.40 of the Revised Code, the disability benefit recipient shall thereafter be relieved from submitting to an annual medical examination by an OP&F physician until otherwise notified in writing by OP&F or the board, but any waiver granted shall not waive any rights the board may have to request a medical examination in accordance with the terms of division (C)(2)(b) of section 742.40 of the Revised Code.~~

~~(H) If the refusal of a disability benefit recipient to submit to any medical examination under section 742.40 of the Revised Code continues for one year, whether documented by OP&F's books and records or as presumed under the terms of this rule, then the disability benefit recipient's disability and medical expense benefits shall be forfeited, as provided in division (C)(2)(e) of section 742.40 of the Revised Code, effective as of the date of the original suspension, as referenced in a writing provided to the recipient from the fund or the board.~~

~~(I) (E) All~~ Unless otherwise provided in this rule, all notices provided to the disability benefit recipient under this rule shall be ~~either delivered personally, sent by express delivery service, certified mail or~~ first class U.S. mail, postage prepaid and addressed to the disability benefit recipient at the ~~most recent address set forth in such recipient's file with the fund, or to such other address as the disability benefit recipient shall thereafter designate by proper notice in accordance with this paragraph on file with OP&F.~~ All notices to the fund OP&F shall be addressed at its principal place of business.

~~(J) For purposes of this rule, a "disability benefit recipient" shall mean the member of the fund who is receiving a disability benefit pursuant to division (C)(2), (C)(3), (C)(4), or (C)(5) of former section 742.37 of the Revised Code or section 742.38 of the Revised Code.~~