

## **BHR-15.02 - Fire & Police Disability, Retirement & Death Benefit Plan Administrative Rules**

### **FIRE AND POLICE DISABILITY, RETIREMENT AND DEATH BENEFIT PLAN ADMINISTRATIVE RULES**

*Administrative Rules*

*Adopted by FPD&R Board*

*Pursuant to Rule-Making*

*Authority*

ARB-BHR-15.02

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### I. DEFINITIONS

**"Active Member."** The term "Active Member" means a Member who is serving and is paid from the payroll of the Bureau of Police or Bureau of Fire, Rescue and Emergency Services.

**"Board."** The term "Board" or "Board of Trustees" shall mean the Board of Trustees of the Fire and Police Disability and Retirement Fund.

**"Fund."** The term "Fund" shall mean the Fire and Police Disability and Retirement Fund established under Section 5-101 of the Plan.

**"Medically Stationary."** The term "Medically Stationary" means that no further material improvement can reasonably be expected from medical treatment or the passage of time. It does not mean that a Member's condition has stopped deteriorating or has stabilized. It means that in terms of reasonable medical probability, the condition is not going to improve.

**"Member."** The term "Member" means those sworn permanent employees of the Bureau of Fire, Rescue and Emergency Services having the job classifications of Fire Fighter, Fire

Fighter Specialist, Fire Fighter Communications, Fire Lieutenant, Fire Training Officer, Staff Fire Lieutenant, Fire Captain, Fire Training Captain, Fire Battalion Chief, Deputy Fire Chief, Division Fire Chief, City Fire Chief, Fire Inspector I, Fire Inspector II, Fire Inspector I Specialist, Staff Fire Captain, Fire Lieutenant Communications, Harbor Pilot, Assistant Fire Marshal, Assistant Public Education Officer and EMS Coordinator, and those permanent sworn employees of the Bureau of Police having the job classifications of Police Officer, Police Sergeant, Police Detective, Criminalist, Police Lieutenant, Police Captain, Police Commander, Deputy Police Chief, Assistant Police Chief, and Police Chief.

The term "Member" does not include the Fire Chief or Police Chief if their terms of employment provide that they shall participate in another retirement plan.

Membership shall commence at the time a sworn employee effectively receives his or her initial appointment to either the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police and shall continue until the Member's employment with the Bureau of Fire, Rescue and Emergency Services or Bureau of Police terminates for any reason, other than retirement pursuant to Section 5-304 of the Plan or disability under Section 5-306 or 5-307 of the Plan.

An Active Member (except those Members covered under Article 5 of the Plan) whose employment is terminated after completing five Years of Service shall be ineligible for any Plan benefits after such termination except the vested termination benefits described in Section 5-305 of the Plan. A Member (except those members covered under Article 5 of the Plan) whose employment is terminated after completing one-half year of service and before completing five Years of Service shall be ineligible for any Plan benefits after such termination except the unvested termination benefits described in Section 5-305 of the Plan.

A Member who is receiving benefits under Article 5, Prior Benefits, of the Plan or who has voluntarily elected to be covered under Article 5 of the Plan shall be ineligible to receive benefits under Article 3 of the Plan. Notwithstanding the preceding sentence, a Member who was receiving disability benefits on January 1, 1990 but subsequently returns to full duty, without limitation, and earns two more Years of Service may irrevocably elect to be covered under Article 3 rather than Article 5. A member who returns to duty, in a regularly budgeted sworn job classification, in the Bureau of which he or she is a member on a full time basis (either 40 hours per week, 42 hours per week or 53 hours per week in the Bureau of Fire, Rescue and Emergency Services or 40 hours per week in the Bureau of Police) will be deemed to have returned to full duty without limitation.

**"Director"**. The term "Director" where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or his or her designee.

**"FPDR One"**. The term "FPDR One" shall refer to Members who are sworn employees of the Bureau of Fire and Bureau of Police and who receive benefits under Article 5 of Chapter 5 of

the Charter of the City of Portland, Oregon.

**"FPDR Two"**. The term "FPDR Two" shall refer to Members who are sworn employees of the Bureau of Fire and Bureau of Police who are not FPDR One Members and were sworn before January 1, 2007 and who receive benefits under Article 3 of Chapter 5 of the Charter of the City of Portland, Oregon.

**"FPDR Three."** The term "FPDR Three" shall refer to Members who are sworn employees of the Bureau of Fire and Bureau of Police first sworn on or after January 1, 2007 and who receive retirement benefits under the Public Employees Retirement System of the State of Oregon and disability benefits under Article 3 of Chapter 5 of the Charter of the City of Portland, Oregon.

**"Plan."** The term "Plan" shall mean the Fire and Police Disability, Retirement and Death Benefit Plan which appears as Chapter 5 of the Charter of the City of Portland, Oregon.

**"Significant Factor."** The term a "Significant Factor" means an important, proximate cause.

**"Substantial Gainful Activity."** A Member will be considered to be capable of "Substantial Gainful Activity" if he or she is qualified, physically, and by education and experience, to pursue activities or employment which will produce earnings, profits or remuneration equal to or exceeding one-third of the Member's rate of Base Pay while on disability. In determining whether a Member has sufficient education and experience to pursue other activities or employment, the following factors shall be considered:

- (1) Previous employment experience;
- (2) Formal and informal education;
- (3) Formal and informal training;
- (4) Knowledge and general abilities;
- (5) Transferable skills;
- (6) Residual functional mental and physical abilities.

**"Surviving Spouse."** The term "Surviving Spouse" shall mean the person to whom the Member was legally married throughout the twelve-month period preceding death, and from whom the Member was not judicially separated or divorced by interlocutory or final court decree at the time of death. In accordance with Ordinance No. 176258, benefits provided to Fund Members' surviving spouses are extended on equal terms to gay and lesbian Members same-sex domestic partners. All references in Chapter 5 of the Charter of the City of Portland, and/or in the Administrative Rules to "surviving spouse" shall be understood to apply on equal terms to the same sex domestic partner of the Member.

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## II. BOARD PROCEDURES

A. Regular and Special Meetings

Regular meetings of the Board are normally held on the second Tuesday of every month and commence at 8:30 a.m. Unless otherwise stated, all meetings will be in the conference room of the Board of Trustees. Special meetings may be called by the Chairperson, or by three or more members of the Board. All meetings are governed by the provisions of ORS 192.610 to 192.690 in effect at the time of the meeting. Except when in executive session pursuant to ORS 192.660, all meetings of the Board are open to the public. All meetings shall be recorded electronically or by a court reporter.

B. Agenda

(1) Notice of the date and time of meetings shall be included in the agenda prepared by the Director. The place where the meeting will be held shall also appear if the meeting is to be held somewhere other than the Board's conference room.

(2) All business of the Board shall be transacted at regular or special meetings. Except in the case of an actual emergency, no matter will be considered by the Board unless it is included on a Board agenda. To be included on a Board agenda, a request for inclusion on the agenda must be received by the Fund Director not less than 7 calendar days before the date of the meeting.

C. Conduct of Meetings

(1) The Chairperson or Chairperson Pro Tempore shall preside over all meetings unless the Chairperson or Chairperson Pro Tempore directs otherwise. In the absence of the Chairperson or Chairperson Pro Tempore, the presiding officer of any Board meeting shall be a trustee chosen by a majority of the Board of Trustees. In the event that a meeting is being chaired by someone other than the Chairperson or Chairperson Pro Tempore, such presiding officer shall retain his or her right to vote and to participate in discussion of matters before the Board.

(2) Roberts' "Rules of Order, Newly Revised" (1990 Ed.) shall be controlling in governing Board procedure in the absence of any direction appearing in these rules.

D. Adoption of Rules

Any proposed change or addition to these rules must be referred to the Board of Trustees. The Board will then consider the proposed change or addition.

E. Administration

- (1) All Member absences without pay shall be reported to the Director by the Chief of the Bureau affected.
- (2) All Active Members and all Members receiving disability benefits or a pension shall immediately notify the Director, in writing, of changes in their home address.
- (3) Members receiving disability benefits under Article 5 of the Plan shall notify the Director if the Member wishes to engage in outside employment and complete the application process described in Section III G (4) of these rules. Members receiving disability benefits under Article 3 of the Plan who wish to engage in outside employment activities shall comply with the notice and disclosure requirements of Section III C or D.
- (4) All requests for legal opinions concerning the Plan shall be requested by the Board, or the members thereof, and shall be transmitted to the selected legal advisor through the Director. All opinions issued in response to such requests shall be filed with the Director.
- (5) All present Active Members and all persons, upon becoming Active Members of either Bureau shall immediately file for permanent record with the Director, copies of their birth certificates or delayed birth certificates. All Members shall also file copies of their marriage certificates and/or divorce, annulment or separation decrees and of their spouses' birth certificates. Single Members shall, upon their marriage, immediately comply with provisions applying to married Members. Claims against the Fund will not be allowed until certificates necessary to said claim are filed.
- (6) All forms necessary to carry out the provisions of the Plan shall be provided by the Board.
- (7) Subpoenas. The Board and/or Director may compel the attendance of witnesses and the production of documents by the issuance of subpoenas. The Board's authority to issue subpoenas is delegated to the Director who may issue subpoenas upon his or her own motion or upon the application of a claimant. Applications for subpoenas must be in writing and must set forth the name of the witness and the general relevance and reasonable scope of the evidence sought. If the request is for a subpoena duces tecum, it also must specify the particular books, papers, records or documents to be produced.
- (8) Whenever the Director has medical evidence that a Member who is receiving disability benefits is capable of performing limited duty the Director shall notify the Member's Bureau Chief of that fact. Included in the notification will be a report of the member's limitations and a request that the Bureau Chief provide the Member with a job that is compatible with the Member's limitations.

#### F. Election of Trustees

- (1) One Active Member of the Bureau of Fire, Rescue and Emergency Services and One Active Member of the Bureau of Police shall be elected to the Board by the Active Members of

their respective Bureau. Elections will be held in the year of the respective Trustees' expiring term.

(2) Two citizens of the City of Portland who are not active or past members of the Fire and Police Disability and Retirement Fund and who have not been employed as a City of Portland firefighter or police officer shall be appointed to the Board. The citizen shall be nominated by the Mayor and approved by the Council. Council-appointed citizen-trustee and elected trustees-appointed citizen-trustee shall be appointed by January 1.

(3) Elected members of the Board shall have a three-year term of office. Any citizen-trustees who misses four or more meetings in the fiscal year may be removed by the Board unless the Board determines there was good cause for the absences.

(4) Regular elections, to fill expired terms on the Board of Trustees, shall be conducted as follows:

(a) Elections shall be held annually during the month of December. Balloting will be held within the first three business days of December.

(b) Notice of elections shall be given in writing and posted in each fire station and police building on or before the first Monday in November.

(c) Any Active Member may nominate himself or herself by filing such nomination in writing with the Secretary on or before the second Monday in November.

(d) Notice of nominations shall be given in writing and by posting in each fire station and police building on or before the third Monday in November. If only one Active Member is nominated in any election, the election shall not be held. The Director shall determine and certify to the Board that the nominee was unopposed. The nominee so certified shall be declared elected in accordance with the procedures set out in Rule II.G (5) (m) below.

(e) The Director shall prepare printed ballots, listing the nominees in the order in which they file. The required number of ballots shall be forwarded to the Chief of the Bureau of Fire, Rescue and Emergency Services.

(f) The Director shall mail individual ballots to Active Members of the Bureau of Police along with a self-addressed, stamped, return envelope. These ballots will be mailed to Active Members on the third Friday of November and must be postmarked as return mail on or before the 3<sup>rd</sup> day of December.

(g) The Chief of the Bureau of Fire, Rescue and Emergency Services shall designate a custodian, for each ballot box, who shall supervise the voting by secret ballot.

(h) The Director shall provide to the Chief of the Bureau of Fire, Rescue and Emergency Services a typewritten list of those eligible to vote. It shall be the duty of each custodian to check off each voter's name, after his or her ballot has been cast.

(i) A ballot box shall be circulated in each fire station by the designated custodian or custodians.

(j) Balloting by Active Members of the Bureau of Fire, Rescue and Emergency Services shall be allowed for a period of time necessary to cover all shifts but not to exceed 72 hours. At the end of such period, the custodians shall seal and forward the ballots to the Director.

(k) An abstract of votes cast by the Active Members of each Bureau, signed by the Director, together with the tally sheets, signed by the Director, shall be forwarded to the Board of Trustees for its next regular meeting.

(l) In the event no candidate receives a majority of the votes cast (equivalent to 50 percent plus 1 vote), a runoff election shall be held between the two candidates receiving the most votes. The Director shall, within three (3) days of the initial vote count, announce to the Members of the respective Bureau that a runoff election is needed.

(m) In the event of a runoff election, ballots will be distributed within five (5) days of the determination of the need for a runoff election. The runoff election shall be held for three days during the last week of December. The counting of the ballots will be conducted in the same manner as regular elections and will be scheduled on or before the last working day of December.

(n) At the first regular meeting of the Board following the election, the names of the nominees and votes received shall be entered in the minutes. The nominees, from each Bureau, receiving the highest number of votes cast shall be declared elected. No contest of any election shall be had after said declaration. Tie votes shall be decided by the drawing of lots, under the Director's supervision.

(5) Any Board member who ceases to be an Active Member may complete the remainder of his or her term. Notwithstanding the previous sentence, a Board member who is discharged for cause shall cease to be a member of the Board on the effective date of his or her discharge.

(6) Special elections, for unexpired terms, shall be held within 30 days after a vacancy occurs and such elections shall be conducted in the same manner as regular elections.

#### G. Travel Policy.



It is the desire and intention of the Board to ensure that all Trustees receive educational opportunities afforded by attendance at conferences and seminars relevant to their duties on the Board.

Trustees shall be reimbursed for expenses related to the conference or seminar attendance based on the City of Portland 's Rules for Travel, Miscellaneous Expenses and Receipt of Related Benefits. The Board shall file an Addendum to use the per diem method for meal reimbursement.

Trustees are authorized to attend up to two conferences per fiscal year as long as the total number of conferences attended by the trustees does not exceed 6. Trustees will coordinate with other Trustees and the Director to stay within the number of limited spots for each fiscal year. Prior to registering, Trustees shall notify the Director who will coordinate travel and assure that the budgeted total travel allocation is not exceeded. Trustee's attendance at more than two each or total of 6 conferences in a fiscal year requires pre-approval by the Board of Trustees.

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### **III. BENEFITS**

#### **A. Disability Benefits Generally**

Disability benefits will be paid to a Member only during such time as the Member is unable to perform his or her required duties in the Bureau of Fire, Rescue and Emergency Services or Bureau of Police. Thus, the disability benefits being paid to a Member shall cease when the Member is capable of performing the duties required of him or her. A Member who is unable to perform his or her usual job but is able to do other work to which the Member may be assigned in his or her respective Bureau, is ineligible for disability benefits if such a job is available to the Member. For example, a police officer whose injury prevents him or her from performing police duties in the field will be ineligible for disability benefits if the officer is capable of performing more sedentary duties and such sedentary position is available to the officer.

#### **B. Applications for Disability Benefits**

- (1) No disability benefits shall be paid to a Member unless the Member files with the Director a complete and timely application requesting such benefits.
- (2) Applications shall be made on forms prescribed by the Board. The Board may require the Member to provide any information that it deems necessary to carry out its duties.
- (3) Application for disability benefits may be made by the Member, or the Member's authorized representative. A representative shall submit to the Board written proof of the

representative's authority.

(4) Applications for disability benefits must be submitted to the Director no later than 30 days after the Member is injured or experiences an illness unless the Member establishes that he or she had good cause for failing to do so. Failure to file an application within the time specified bars a claim for disability benefits.

(5) By making application for disability benefits, each applicant thereby authorizes the Director to request and obtain from any physician, health practitioner, hospital, clinic, pharmacy, employer, employment agency, government agency, institution or any other person or organization, any information within any of their records or knowledge regarding the applicant's health, income and employment which in any way relates to the applicant's claim of disability and/or capacity to engage in Substantial Gainful Activity. The applicant thereby also authorizes all such physicians, practitioners, hospitals, clinics, pharmacies, employers, employment agencies, governmental agencies, institutions, persons, and organizations to furnish such medical, health, employment and income information to the Director upon request therefor. The applicant recognizes that the information disclosed may contain information that is protected by federal and state law, and by filing an application for disability benefits, specifically consents to the disclosure of such information. All applications for disability benefits shall contain a form to be signed by the applicant authorizing the release of the foregoing information to the Director or its authorized representatives.

(6) All applications for service-connected disability benefits, shall contain a report of a superior officer, the signature of the Chief of the Bureau affected and a report of the Member's attending physician.

(7) All applications for occupational disability benefits shall contain a report of a superior officer, the signature of the Chief of the Bureau affected, together with a report of the Member's attending physician.

(8) All applications for nonservice-connected disability benefits shall contain a signature of the Chief of the Bureau affected, together with a report of the Member's attending physician.

(9) Although information comes from many sources, claim assessment is frequently based in part on information provided by the Fire and Police Bureaus. If the Bureau designates a process for requesting documents, then the Fund staff will comply with that process. With the exception of attorney-client privileged documents, all information gathered and made part of the claim file will be accessible to the claimant, upon the claimant's request. If a Bureau deems some records as privileged, it is that Bureau's responsibility to identify what information is privileged and withhold the information.

C. Offsets to Service - Connected and Occupational Disability Benefits Payable Under

## Article 3 of the Plan

- (1) During the first year a Member is eligible for service-connected or occupational disability benefits under Article 3 of the Plan, the Member shall receive a benefit equal to 75 percent of the Member's Base Pay reduced by 50 percent of any wages earned in other employment.
- (2) If the service-connected or occupational disability continues after one year, a disabled Member shall continue to receive a benefit equal to 75 percent of the Member's Base Pay reduced by 50 percent of any wages earned in other employment until the Member is Medically Stationary and capable of Substantial Gainful Activity. A disabled Member who is Medically Stationary and capable of Substantial Gainful Activity shall receive a benefit equal to 50 percent of the Member's Base Pay reduced by 25 percent of any wages earned in other employment. Notwithstanding the foregoing, the minimum benefit shall be 25 percent of the Member's rate of Base Pay, regardless of the amount earned in other employment.
- (3) Members receiving service-connected or occupational disability benefits under Article 3 of the Plan who intend to enter the employ of any person, firm or corporation, or engage in any activity which will result in the Member receiving "wages earned in other employment" shall notify the Director, in writing, of the Member's intention. The Notice shall be accompanied by a written statement reflecting an estimate of the Member's earnings from such activities. Thereafter, the Member shall furnish the Director with such information and at such intervals as the Director deems necessary to implement the wage offset provisions of this rule.
- (4) The term wages earned in other employment includes the gross salary, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer other than the Bureau of Fire or Bureau of Police. The term wages earned in other employment also includes any salary, fees, commissions, profits or other remuneration that the Member receives from his or her self-employment in a profession, trade or business. The term wages does not include income from investments such as interest, dividends, rentals and capital gains.
- (5) A Member receiving service connected disability benefits, under Article 3 of the plan, who is released to modified duty and capable of substantial gainful activity, but who is unable to return to the Bureau, shall pursue other employment within the Member's restrictions. "Pursue other employment" means: an active, serious, and continuing effort to seek full-time work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits;

and submission of applications or résumés.

(6) A Member's failure to seek other employment may result in suspension or reduction of benefits.

D. Offsets to Nonservice-Connected Disability Benefits Payable Under Article 3

(1) A Member eligible for nonservice-connected disability benefits under Article 3 of the Plan shall receive a benefit equal to 50 percent of the Member's Base Pay reduced by 50 percent of the wages earned by the Member in other employment. Wages earned by the Member in other employment has the same meaning as the term "wages earned in other employment" as defined in Section C.4, above. The notification procedure described in Section C.3 above shall also apply to Members covered by this section who intend to engage in activities which will result in the receipt of "wages earned in other employment."

(2) A Member receiving nonservice-connected disability benefits under Article 3 of the Plan, who is released to modified duty and capable of substantial gainful activity, but who is unable to return to the Bureau, shall pursue other employment within the Member's restrictions. "Pursue other employment" means: "an active, serious, and continuing effort to seek full-time work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or resumes.

(3) A Member's failure to pursue other employment may result in a reduction or termination of benefits.

E. Disability Retirement Age

(1) Service-connected, occupational and nonservice-connected disability benefits payable under Article 3 of the Plan shall cease upon attaining Disability Retirement Age except as provided in Section 2 hereof. A Member receiving service-connected or occupational disability benefits shall be eligible to receive a retirement benefit at Disability Retirement Age, which shall be the earlier of the dates the Member is (1) credited with 30 Years of Service for retirement benefit purposes or (2) the date the Member attains social security retirement age. Since a Member who receives a disability benefit which is less than 75 percent of the Member's Base Pay in any given year will not be credited with a full Year of Service for any such year (refer to § 5-302(c) of the Plan), there will be more than 30 years between the time a Member was hired and the time he or she will be deemed to have reached Disability Retirement Age based on 30 Years of Service. For example, assume that a

Member who has 19 Years of Service becomes disabled. Assuming that the Member receives service-connected disability benefits equal to 75 percent of Base Pay during the first year of disability and 50 percent of Base Pay thereafter, the Member would have to be disabled for 16 years before he or she would be considered to have attained Disability Retirement Age based upon 30 Years of Service. For purposes of this rule, social security retirement age means the retirement age provided in 42 USC § 416(l)(1).

(2) A disabled Member who is receiving service-connected, occupational, or nonservice-connected disability benefits pursuant to Article 3 of the Plan at the time he or she attains Disability Retirement Age shall only be eligible to receive disability benefits up to the date he or she attains Disability Retirement Age, at which time the disabled Member shall be entitled to receive only a retirement benefit.

A Member covered under Article 3 of the Plan, who is actively employed and suffers a service-connected, occupational, or nonservice-connected disability after attaining Disability Retirement Age, shall be eligible to receive disability benefits for a period of one (1) year from the date of such disability, at which time the disabled Member shall be entitled to receive only a retirement benefit.

#### F. Applications for Pensions and Death Benefits

(1) All persons presenting claims for death benefits shall file for permanent record with the Director, copies of the death certificates of the deceased Members.

(2) All surviving spouses presenting claims against the Fund shall file for permanent record, with the Director, copies of their birth certificates or delayed birth certificates and of their marriage certificates unless such are on file with the Director. All same-sex domestic partners presenting claims against the Fund shall file for permanent record, with the Director, copies of their birth certificates or delayed birth certificates and an affidavit of the member and of the domestic partner, on a form prescribed by the Fund, attesting to their domestic partnership. They shall also file for permanent record, with the Director, copies of the birth certificates of all dependent minor children entitled to participate in any benefits of the Fund. Claims against the Fund will not be allowed until such certificates and/or affidavits are filed.

(3) All persons presenting claims for pensions or benefits, for minor children, shall file for permanent record, with the Director, copies of the birth certificates or records of adoption of said minor children.

Claims against the Fund will not be allowed until such certificates and papers are filed.

No application for benefits from the Fund for said dependent minor child or children shall be allowed until there has been filed with the Board an affidavit of dependency.

- (4) A baptismal record showing date of birth shall be satisfactory evidence of birth.
- (5) Whenever a variation of names occurs in the name of a Member, his or her spouse, or dependent minor children, an affidavit shall be furnished to the Director to substantiate that the names relate to one and the same person.
- (6) All applications for pensions by FPDR One and FPDR Two Members shall be made at least fourteen days prior to the second Tuesday of the month in which the Member wishes to retire. Pensions shall become effective on the day after the Members' employment terminates.
- (7) All applications for death benefits by surviving spouses or minor children, shall be made within thirty days after the death of Members, unless good cause is shown for the failure to do so. Such benefits shall become effective on the day after the Member's death.

G. Recipients of Disability Benefits

- (1) All Members drawing disability benefits, of whatever nature shall identify a physician, subject to Section III (I)(8), who will be responsible for directing the Member's medical care. As used above, "physician," means:
  - (a) A Medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or
  - (b) For a period of 30 days from the first visit on the initial claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States . All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member's identified physician or a physician appointed by the Director, unless otherwise determined by the Director.
- (2) All Members receiving disability benefits under Article 5 of the Plan shall furnish the Director proof of their residency in the State of Oregon . Warrants in payment for such benefit, and the delivery of such warrant shall be subject to such proof of residency. Proof of residency shall be in the form of a statement signed by the Member certifying that he was actually living in the State of Oregon , as defined in Section 5-126(10) of Article 5 of the Plan, during the period for which the warrant was issued unless the residence requirement has been waived. The Board may waive the residence requirement upon a showing of necessity or hardship.

(3) Any Member receiving disability benefits under the Plan shall file with the Director a physician's certificate of continued disability for each pay period, unless otherwise waived by the Director.

(4) While a FPDR One Member receives disability benefits under Article 5 of the Plan such Member shall not enter the employ of any person, firm, company or corporation, or be self-employed, or follow any other calling or vocation, or be employed in any other business, without having on file in the office of the Director a "Request to Engage in Outside Employment," which has been approved by the Board of Trustees. The "Request to Engage in Outside Employment" shall contain the following information:

(a) Name and address of Member;

(b) The proposed type of work, employment, business calling or vocation;

(c) Name and address of the place where the proposed employment will be done;

(d) The hours of work and the time that would be required of the disabled Member in such proposed work, employment, business, calling or vocation;

(e) The nature of duties contemplated or involved in such proposed work, employment, business, calling or vocation;

(f) Such other information which the Member feels is pertinent to his request.

Any such "Request to Engage in Outside Employment" must be accompanied by a statement from the Member's treating physician, obtained at the Member's sole expense, to the effect that the proposed type of work, employment, business, calling or vocation and the working conditions relative thereto will not tend to hinder, delay or prevent recovery of the Member from the disability for which he or she is receiving benefits from the Fund and his or her return to duty. The Board of Trustees may request and the Member shall supply at his or her sole expense any additional information or supporting data which the Board of Trustees deems appropriate.

Failure of a Member to comply with this rule will be cause for termination or suspension by the Board of Trustees of the right of the Member to receive benefits from the Fund.

(5) For service-connected and occupational disability benefits and for nonservice connected disability benefits under Article 3, if the Director obtains evidence that the Member is not cooperating in vocational rehabilitation, or is not pursuing other employment, the Director shall notify Member of the Director's determination to suspend, reduce or terminate benefits. A summary of the evidence and the decision shall be provided to the Member. By

appointment and during regular business hours, the Member shall be entitled to review the non-privileged evidence upon which the decision is based. The Member will have 14 days to provide a written response for the Director's consideration. Regarding service-connected and occupational disability benefits, the Director may suspend or reduce benefits. Regarding non-service connected disability benefits, the Director may reduce or terminate benefits. The Member shall also be notified of the rights under Charter Section 5-202(h) of the right to appeal for a Hearing. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.

(6) For nonservice connected disability benefits under Article 3, if the Director obtains evidence that: (a) the Member is not cooperating in treatment, (b) the Member is no longer disabled or is no longer eligible, (c) the Member is not cooperating in a designated examination under Charter Section 5-202(a); (d) the Member is not cooperating in the administration of the claim and/or fulfilling the duties and obligations under the Charter and the administrative rules; or (e) the Member has engaged in fraud or a material misrepresentation, the Director shall notify the Member of the Director's decision to suspend, reduce or terminate benefits. A summary of the evidence and the decision shall be provided to the Member. By appointment and during regular business hours, the Member shall be entitled to review the non-privileged evidence upon which the decision is based. The Member will have 14 days to provide a written response for the Director's consideration. The Member shall also be notified of the rights under Charter Section 5-202(h) and the right to appeal for a Hearing as provided for in Section IV. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.

(7) For service connected and occupational disability benefits under Article 3, if the Director obtains evidence that:

(a) the Member is not cooperating in treatment;

(b) the Member is not cooperating in a designated examination under Charter Section 5-202(a);

(c) the Member is not cooperating in the administration of the claim and/or fulfilling the Member's duties and obligations under the Charter and the administrative rules;

(d) the Member is no longer disabled or eligible;

(e) the Member has engaged in fraud or a material misrepresentation; or

(f) the Member's claimed condition no longer arises out of and in the course and scope of the Member's employment with the Bureau of Fire, Rescue and Emergency Services or the Police Bureau, as provided for in Section IV(C)(7), the Director shall notify the Member of the Director's decision to suspend, reduce or terminate benefits. A summary of the



evidence and the decision shall be provided to the Member. By appointment and during regular business hours, the Member shall be entitled to review the non-privileged evidence upon which the recommendation is based. The Member will have 14 days to provide a written response for the Director's consideration. The Member shall also be notified of the rights under Charter Section 5-202(h) and the right to appeal for a Hearing as provided for in Section IV. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.

#### H. Non-Military Leave of Absence

All Members granted a non-military leave of absence without pay by the Council of the City of Portland, Oregon, or the Commissioner in charge of the Bureau in which the Member is employed, shall have preserved under the Plan during such leave the following rights:

- (1) In the case of FPDR One Members, a right of return of contributions to the Member in case of resignation or discharge in accordance with Section 5-113 of Article 5 of the Plan.
- (2) In the case of FPDR Two Members, the right to retire or receive vested or unvested benefits under the applicable provisions of the Plan upon proper application to the Director.
- (3) Right of reinstatement to whatever rights the Member had at the commencement of said leave of absence upon return to active duty in the Bureau from which said leave of absence was granted.
- (4) Right of surviving spouse or dependent minor children of the Member, if any, to the benefits and pensions granted by Section 5-309 of Article 3 of the Plan or Section 5-118 of Article 5 of the Plan, whichever is applicable, in those cases where a Member dies before retirement from a cause not in line of duty.
- (5) Right to benefits or pensions for injury, sickness or death occurring during said leave of absence if such disability is directly attributable to a former injury in line of duty or occupational disability for which the Member has received benefits or which the Board may otherwise recognize as pre-existing, provided such injury, sickness or death has not been caused by an aggravation of the pre-existing injury or sickness during said leave of absence.
- (6) For purposes of determining service credit, Members working less than full time shall be designated as on leave without pay for any period less than full time. The amount credited for each Year of Service credit shall be a fractional Year of Service based on the actual number of hours worked each year in which the Member worked part-time, as a percentage of full-time hours.

#### I. Reimbursement for Expenses Attributable to Service-Connected or Occupational Injury or Illness.

Reimbursement for actual, reasonable and necessary expenses, as determined by the Director, incurred by a Member as a result of a service-connected or occupational injury or illness shall be paid as provided below:

- (1) Members shall be reimbursed for the actual, reasonable and necessary medical expenses they have incurred. Payment directly to the medical care provider shall be deemed to be reimbursement of the Member.
- (2) Actual, reasonable and necessary costs for travel, prescriptions and other necessary expenses paid by the Member will be reimbursed upon request by the Member.
- (3) All requests for reimbursement shall be made on forms provided by the Director and accompanied by itemized documentation which supports the request. For example, requests for reimbursement for prescriptions must be accompanied by a receipt from the provider identifying the prescription and its price and requests for mileage reimbursement must be accompanied by a statement reflecting the actual mileage traveled.
- (4) Reimbursement for the cost of meals, lodging, public transportation or use of a private vehicle shall be at the rate of reimbursement paid to City employees when incurring such expenses.
- (5) Reimbursement for the cost of meals, lodging, or travel exceeding 50 miles will be paid only if such expenses are pre-approved by the Director.
- (6) Expenses incurred for public transportation or the use of a private automobile will be reimbursed based on the most direct route between the Member's home and the facility where the service is to be performed.
- (7) All requests for reimbursement for expenses paid by the Member must be submitted to and received by the Director within 60 days of incurring the expense for which reimbursement is sought.
- (8) Initial determinations regarding actual, reasonable and necessary medical and other expenses shall be made by the Director. Members shall be advised, in writing, of any denials. In the event that a denial is issued by the Director, the Member may appeal such determination by filing with the Director a written notice of appeal requesting reconsideration before a hearings officer. However, the reconsideration shall not be granted unless the notice of appeal is received by the Director within 60 days after the mailing of the determination, unless the Member can establish good cause why the notice of appeal was not received within the required 60 days.
- (9) Medical or hospital service providers that have fee arrangements with the Board.

(a) Notwithstanding the provisions of subsection (1) above, FPDR One and FPDR Two Members receiving disability benefits under FPDR Two and Three must obtain hospital and medical services for service-connected or occupational injuries or illnesses from providers who have fee arrangements with the Board, except in those circumstances described in subparagraph (b) of this paragraph 9. A listing of such providers shall be on file in and available from the Director's office.

(b) Members may obtain and will be reimbursed for the actual and reasonable costs of necessary medical or hospital services received from providers who do not have fee arrangements with the Board, in the circumstances described in this subparagraph (b) below. Payment directly to the provider will be considered to be reimbursement to the Member.

1. The Member has a life-threatening emergency requiring immediate medical care at the nearest emergency facility. Life-threatening emergencies include, but are not limited to, situations such as profuse bleeding, loss of consciousness, breathing difficulty or sudden severe head trauma.

2. The Member is traveling in an area in which there are no providers who have a fee arrangement with the Board and a service connected or occupational injury or illness requires immediate medical treatment.

3. The Member is referred by either the Bureau of Police or the Bureau of Fire, Rescue and Emergency Services to a provider with whom the Bureau has made arrangements for vaccinations or evaluation and treatment for on-the-job exposures to blood borne pathogens or hazardous materials.

4. Other exceptions specifically authorized by the Director or his or her designee. The Director or his or her designee may waive the requirement that a Member seek hospital or medical services from a provider who has a fee arrangement with the Board upon a showing by the Member that it is a necessity that the Member be treated by another provider or that it would cause an undue hardship on the Member to require that he or she seek treatment only from a provider who has a fee arrangement with the Board.

(c) Initial determinations under this subsection I. (9) shall be made by the Director or the Director's designee. Members shall be advised, in writing, of any denial. In the event that a denial is issued, the Member may appeal such determination by filing with the Director a written notice of appeal requesting a hearing before a hearings officer. However, a hearing shall not be granted unless the notice of appeal is received by the Director within 60 days after the mailing of the determination, unless the Member can establish good cause why the notice of appeal was not received within the required 60 days.

## J. Annual Cost of Living Benefit Adjustments

Benefits payable under Section 5-304 (Retirement Benefits) and Section 5-305 (Termination Benefits) of the Plan will be adjusted effective July 1 of each year to reflect changes in the cost of living. Although the percentage rate of change shall not exceed the percentage rate applied to retirement benefits payable to police officers and fire fighters covered under the Public Employees' Retirement System of the State of Oregon (PERS), the percentage rate of change shall be equal to such percentage rate of change under PERS. A Member's benefits will be adjusted on July 1 of any given year only if the Member separates from service on or before June 30 of that year.

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#### **IV. HEARING PROCEDURES REGARDING PENSION AND DISABILITY CLAIMS**

##### **A. Definition**

(1) As used in these rules relating to hearings procedures, the term "the Board of Trustees" or "the Board" shall mean the Board of Trustees of the Fire and Police Disability and Retirement Fund or a hearings officer appointed by the Board of Trustees pursuant to Charter Section 5-202(b).

##### **B. Claim Processing; Request for Hearing**

(1) The Director may approve or deny an initial claim. The Member will be notified of the Director's decision. If the Director denies a claim, the Member will be notified in writing of the decision along with the notice of the right to request a fact-finding hearing. If a Member wishes to proceed with a hearing, a request for hearing signed by or on behalf of the Member must be made, in writing, and received by the Director within 60 days of the mailing date of the denial. An untimely request for hearing may be accepted by the Director, upon a finding of good cause for the untimely request. Good cause for an untimely request shall be determined by the Director and may be established as provided for in Oregon Rule of Civil Procedure 71B.

(2) The Director shall schedule a hearing within three months after receipt of the request for hearing.

(3) The Member or Director may request a delay in setting the claim for hearing for "extraordinary circumstances" as provided for in subsection (4) of this section. The request must be made as soon as practicable. The request must be provided in writing with an explanation of the reason for the request to delay the hearing and the amount of time requested for delay. If the delay is granted, a rescheduled hearing will then be set as soon as the hearings officer's calendar will permit. In any event, a hearing shall not be postponed for more than one year from the date the Member requested a hearing or the Director set

the claim over for a hearing, except in extraordinary circumstances beyond the control of the Member or the Fund.

(4) Extraordinary circumstances for delay of hearing may include, but is not limited to, investigation by outside agencies, illness and any other basis deemed an extraordinary circumstance by the Director. An extraordinary circumstance for delay of hearing does not include: (a) unavailability of the Member, a lay witness or representative of the Member due to nonemergency occupational, personal or professional business or appointments; (b) unwillingness of the Member, a lay witness or representative of the Member to appear; (c) incomplete case preparation, unless there is a finding that case preparation could not be accomplished with due diligence.

(5) The decision concerning a request for delay shall be made by a designated hearings officer.

### C. Conduct of the Hearing

(1) Hearings before a hearings officer are non-adversarial fact-finding proceedings which are intended to develop an accurate and complete record which will allow the hearings officer to arrive at a fair and equitable determination.

(2) Claimants may elect to represent themselves, or they may be represented by counsel.

(3) All hearings shall be conducted by and under the control of the hearings officer.

(4) Testimony in all hearings shall be taken upon oath or affirmation of the witness from whom received. The hearings officer at the hearing, the Director or the court reporter (in the event the hearing is being recorded by a court reporter) shall administer the oath or affirmation. For the sake of convenience, oaths or affirmations may be administered at the commencement of the hearing to all witnesses who are to testify. The hearings officer, the Fund's attorney, the claimant or the claimant's counsel or representative shall have the right to question or examine any witness.

(5) Any part of the evidence may be received in written form as well as orally.

(6) Exhibits shall be marked and maintained by the Director as part of the record of the proceedings.

(7) Hearings on new claims shall be conducted and shall proceed, subject to the discretion of the hearings officer, in the following manner:

(a) Prior to the hearing, an administrative file will be developed relative to the

applicant's claim. The administrative file will contain documentary information such as the application for benefits, medical reports, etc. This file will be sent to the applicant approximately a week prior to the hearing. The hearings officer will open the hearing by inquiring whether there is any objection to its admission into evidence. If there is no objection, the file will be received in evidence and made a part of the record.

(b) A statement, if any, by or on behalf of the claimant may be presented.

Following such statement, if any, evidence of the claimant in support of his or her claim shall be presented.

(c) Evidence on behalf of the Fund, if any, may be presented.

(d) Rebuttal evidence may be offered.

(e) Closing arguments may be presented.

(8) In disability cases before a hearings officer, if it appears to the hearings officer that further testimony or argument should be received, said officer may, in his or her discretion, continue the hearing.

(9) In disability cases the hearings officer shall excuse all persons from the hearing room except staff, the claimant, the claimant's representative, and shall conduct the hearing.

(5) The determination or decision on any claim, which is reached after a hearing provided for herein, will be in writing and contain findings of fact, conclusions of law, rulings on admissibility of evidence, if not otherwise appearing in the record, and, if the determination is adverse to the claimant, a citation of the statutes under which the determination may be appealed.

(6) Informal disposition may be made of any claim by stipulation, agreed settlement or consent order.

#### D. Evidentiary Rules

(1) The burden of presenting evidence to support each criterion for entitlement to service-connected disability benefits, nonservice-connected disability benefits, or pension benefits shall be upon the applicant throughout the proceeding and shall not shift to the Fund. An applicant shall not receive disability benefits unless his or her claim is supported by medical evidence. A denial of disability benefits need not be based on medical evidence but may be based on the applicant's failure of proof or on the Fund's proof.

(2) Evidence will be excluded if it is immaterial, irrelevant or unduly repetitious.

Hearsay is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs. However, the probative weight given hearsay will depend upon the circumstances, such as whether the party offering the hearsay could have offered better evidence and whether the hearsay could have been but was not rebutted.

(3) Objections to evidentiary offers may be made and shall be noted in the record.

(4) All offered evidence, not objected to, will be received by the hearings officer subject to the hearings officer's power to exclude irrelevant, immaterial, or unduly repetitious matters.

(5) Evidence objected to may be received by the hearings officer. Rulings on its admissibility or exclusion, if not made at the hearing, shall be made on the record at or before the time a final order is issued.

(6) Notice may be taken of facts of which a court may take notice.

(7) Each applicant for service-connected disability benefits under Article 3 of the Plan, except applicants who claim to have stress or mental disorders, must establish that his or her claimed condition arose out of and in the course of the applicant's employment with the Bureau of Fire, Rescue and Emergency Services or Bureau of Police. This means that it must be proven by medical evidence, supported by objective findings, that the Member's employment is a Significant Factor of the claimed condition, disability, or need for medical treatment. Members who claim to have stress or mental disorders must prove that their employment is the primary cause of the disorder. The term stress or mental disorder includes physical ailments or disorders that cannot be attributed to a physical injury or objectively verified through medical examination, e.g., headaches and non-specific chest pain.

(8) In the case of a FPDR Two or FPDR Three Member who is disabled as a result of hernia of the abdominal cavity or diaphragm, AIDS, AIDS-related complex, tuberculosis, hepatitis B, or pneumonia (except terminal pneumonia) it will be rebuttably presumed that such condition arises out of and in the course of the Member's employment with the Bureau of Fire, Rescue and Emergency Services or Bureau of Police. The same rebuttable presumption exists with respect to a Member suffering from heart disease if the Member has five or more years of service with his or her respective bureau when his or her condition becomes disabling.

The presumptions referred to herein may be rebutted only if it is determined by a preponderance of the evidence that the Member's condition did not result from service as a police officer or fire fighter.

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## V. VOCATIONAL REHABILITATION

A. Purpose

Vocational assessments and rehabilitation services are designed to return a disabled Member to gainful employment and reduce the payment of disability benefits by the Fund.

B. Goals

The Goals of the vocational rehabilitation program are to:

- (1) Assess the feasibility and benefit of vocational rehabilitation services to the Fund and the disabled Member.
- (2) Return the Member to his or her former job with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police.
- (3) Return the Member to the same (but modified) job with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police.
- (4) Return the Member to work, performing a different job that capitalizes on transferable skills with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police.
- (5) Return the Member to work, performing a different job that capitalizes on transferable skills with a different employer.
- (6) Return the Member to work, performing a different job that requires training with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police or a different employer.

C. Assessments

- (1) The purpose of an assessment is to determine if the Member is capable of substantial gainful activity, as defined in these rules; as well as to determine if the Member is eligible for vocational rehabilitation services.
- (2) An assessment of the feasibility of vocational rehabilitation will be done regarding a Member who:
  - (a) Experiences a service connected injury or occupational disease; or a non-service connected injury or occupational disease; and
  - (b) Has been declared or is reasonably expected to be declared medically stationary by the Member's attending physician; and



(c) Has been determined by the Member's attending physician to have permanent restrictions or a reasonable expectation of permanent restrictions as a consequence of a service connected injury or occupational disease, or a non-service connected injury or disease.

(3) An assessment shall not be done if the cost of the assessment exceeds the anticipated savings to the Fund.

(4) Components of an assessment may include but not be limited to:

(a) Relevant work history for at least the preceding five years;

(b) Level of education, and proficiency in spoken and written English or other languages, where relevant;

(c) Achievement or aptitude test data;

(d) Permanent limitations due to the injury or disease;

(e) An analysis of the Member's transferable skills;

(f) A list of jobs for which the Member has the knowledge, skills and abilities, and for which a reasonable labor market is documented to exist; and

(g) Consideration of the vocational impact of any limitations which existed prior to the injury or disease.

#### D. Eligibility

(1) A Member is eligible for Vocational Rehabilitation Services when:

(a) The Member has fully participated in an assessment as provided in Section D; and

(b) Vocational rehabilitation services are reasonably expected to reduce disability benefits.

(2) A Member shall participate in vocational rehabilitation services if the Member meets the eligibility criteria in this section and the Member is not capable of "substantial gainful activity", as defined in these administrative rules.

(3) A Member may request vocational rehabilitation services if the Member meets the

eligibility criteria in this section, even if the Member is capable of "substantial gainful activity", if after analysis, the Fund determines that there is a reasonable likelihood of a reduction in disability benefits with completion of the vocational rehabilitation services.

E. Vocational Rehabilitation Plan

(1) A Member who is determined eligible for vocational rehabilitation services, along with a vocational rehabilitation specialist, will develop a specifically achievable vocational rehabilitation plan.

(2) The components of the vocational rehabilitation plan may include but not be limited to:

(a) written vocational goals and objectives.

(b) the actions that must be taken to achieve the goals and objectives,

(c) the services (including any recommended training) needed to fulfill the plan,

(d) the projected start date and completion date of the actions to be taken and services to be provided,

(e) the job-seeking and placement-related activities that will facilitate securing employment,

(f) the way in which progress towards completing the plan will be evaluated, and

(g) the cost of the services and other expenses associated with the plan.

F. Cooperation in Vocational Rehabilitation

(1) A Member who meets the criteria for an assessment under Section D, shall cooperate in vocational rehabilitation. "Cooperate in vocational rehabilitation" means:

(a) Fully participate in an assessment of the feasibility of vocational rehabilitation; and

(b) If determined eligible for vocational rehabilitation services, cooperate in the development of a reasonable and specifically achievable vocational rehabilitation plan consistent with the purpose and goals of vocational rehabilitation;

(c) Fully participate in the approved vocational rehabilitation plan; and

(d) Upon completion of an approved vocational rehabilitation services plan, the Member "pursues other employment," as defined in these rules, in the field for which the vocational rehabilitation services were provided.

(2) For service connected disability benefits, a Member's failure to cooperate in vocational rehabilitation may result in suspension or reduction of benefits.

(3) For nonservice-connected disability benefits, a Member's failure to cooperate in vocational rehabilitation may result in reduction or termination of benefits.

#### G. Cessation of Eligibility for Vocational Rehabilitation Services

A Member's eligibility for vocational rehabilitation services will end when any of the following conditions have been met:

(1) The applicable purpose and goals of the vocational rehabilitation program referred to in Section V. have not been attained.

(2) The Member has been employed with the Bureau of which he or she was a Member at the time of becoming disabled for 60 days or has been employed by another employer or been self-employed for 60 days. This provision shall not apply if additional vocational rehabilitation services are required to overcome obstacles to the Member's continued employment.

(3) The Member's employment ends for a reason unrelated to the Member's service-connected, occupational or nonservice-connected disability.

(4) The Member has refused an offer of employment after he or she has been rehabilitated to the extent necessary that he or she possesses the physical capacities, knowledge, skills and abilities for such employment or has failed to fully participate in available light-duty work.

(5) The Member has declined vocational rehabilitation services, has become unavailable for vocational rehabilitation services or has retired.

(6) The Member has failed, after written warning, to fully participate in an assessment of his or her eligibility for vocational rehabilitation services or to provide requested information.

(7) The Member has failed, after written warning, to fully comply with the Member's responsibilities under a vocational rehabilitation plan.

(8) The Member has stopped attending training without notifying either the vocational

rehabilitation services provider or the Director.

(9) The Member's lack of employment or self-employment for which he or she has the necessary physical capacity, knowledge, or transferable skills and abilities cannot be resolved by vocational rehabilitation services.

(10) The Member has misrepresented a matter which was material to the assessment of eligibility or the provision of vocational rehabilitation services.

(11) Notwithstanding any other provision in these rules, the period of time between plan implementation and plan completion reaches 24 months; or the total expenses associated with the plan reaches \$22,500.00, whichever comes first. The expense limit may be adjusted annually by the Board in keeping with similar annual adjustments made by the Oregon Department of Consumer and Business Services, Workers Compensation Division in OAR 436-120.

#### H. Vocational Rehabilitation Expenses

(1) To receive reimbursement for vocational rehabilitation services, a disabled Member must obtain such services from a provider of vocational rehabilitation services approved by the Director.

(2) Reimbursement for vocational rehabilitation services provided to a Member will be authorized only if the services are included in a vocational rehabilitation plan which has been approved in advance by the Director, subject to the limits provided in Section G (11) of these rules.

(3) Vocational rehabilitation expenses may include payment to one or both of the Bureaus for up to 75 percent of the base salary of a disabled Member placed in a temporary limited duty position.

#### I. Right to Request a Different Vocational Rehabilitation Specialist

A Member has the right to request a different vocational rehabilitation specialist within the company providing vocational rehabilitation services. Any such request should be made to the Director, who shall review the request, and in the event good cause for the requested change is established, the Director shall authorize the Member to work with a different rehabilitation specialist.

#### J. Training Programs and Vocational Rehabilitation and Optional Services

(1) Training programs shall consist of formal or informal instruction designed to teach a Member job skills which will enable the Member to obtain employment in or outside of the Bureau which employed the Member. Optional services are limited services which may be

provided to a Member. Such services are provided at the discretion of the Director. The cost associated with such limited services shall not exceed 10 percent of the total expense limit provided in Section G (11).

K. Right of Appeal

Any Member adversely affected by a decision of the Director has the right of appeal to a hearings officer. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.

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**HISTORY**

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Effective February 1, 1992

As amended by:

Resolution No. 287 on August 8, 1995, Resolution No. 288 on September 12, 1995, Resolution No. 298 on October 14, 1997, Resolution No. 320 on December 14, 1999, Resolution No. 323 on April 11, 2000, Resolution No. 332 on April 17, 2001, Resolution No. 335 on August 14, 2001, Resolution No. 338 on December 11, 2001, Resolution No. 340 on January 15, 2002, Resolution No. 345 on April 9, 2002, Resolution No. 349 on August 13, 2002, Resolution No. 350 on August 13, 2002, Resolution No. 351 on September 10, 2002, Resolution No. 352 on October 8, 2002, Resolution No. 365 on August 12, 2003, Resolution No. 372 on February 10, 2004, Resolution No. 381 on August 10, 2004, Resolution Nos. 388, 389 and 390 on June 14, 2005, Resolution No. 392 on November 8, 2005, Resolution No. 393 on December 13, 2005, Resolution No. 405 on May 9, 2006, and Resolution No. 419 on March 13, 2007.