RESOLUTION NO. 479

WHEREAS, the Board of Trustees (Board) of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that changes were necessary to the FPDR Administrative Rules; and

WHEREAS, FPDR staff and the City Attorney's office provided input; and

WHEREAS, a public hearing on proposed amendments to the FPDR Administrative Rules was held on August 27, 2013; and

WHEREAS, the Board has considered and recommends changes to parts of Sections 5.4, 5.5, 5.7, 5.8 and 5.9 of the FPDR Administrative Rules as shown on Exhibits "A" and "B", attached hereto and by this reference made a part hereof; and

WHEREAS, it is appropriate and in the public interest that the FPDR Administrative Rules be changed in accordance with the recommendations of the Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that the sections of the FPDR Administrative Rules be amended as shown on Exhibit "B".

ADOPTED by the Board of Trustees on the 24th day of September 2013.

Samuel Hutchison
FPDR Director

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EXHIBIT "A"
(Resolution No. 479)

Amends Section 5.4.13 – "FPDR Two Vested Termination"

Amends Section 5.5.09 – "FPDR Two and Three Member Benefits on Nonservice-Connected Death Benefits Before Retirement

Amends Section 5.7.04 – "Claim Approval or Denial"

Amends Section 5.7.05 – "Amount of Benefits"

Amends Section 5.7.07 – "Transitional Duty Program"

Amends Section 5.7.09 – "Recipient of Disability Benefits"

Amends Section 5.7.11 – "Suspension, Reduction or Termination of Benefits"

Amends Section 5.7.13 – "PERS Offset"

Amends Section 5.8.02 – "Disability Benefits Generally"

Amends Section 5.8.04 – "Eligibility"

Amends Section 5.8.05 – "Claim Approval or Denial"

Amends Section 5.8.06 – "Amount of Benefits"

Amends Section 5.8.07 – "Form of Benefits"

Amends Section 5.8.08 – "Transitional Duty Program"

Amends Section 5.8.10 – "Recipient of Disability Benefits"

Amends Section 5.8.12 – "Suspension, Reduction or Termination of Benefits"

Amends Section 5.8.14 – "PERS Offset"

Amends Section 5.9.02 – "Recipients of Disability Benefits"

Amends Section 5.9.03 – "Medical Services"

Amends Section 5.9.04 – "Medical Services Guidelines"

Amends Section 5.9.05 – "Noncovered Services"

Amends Section 5.9.07 – "Medical Management Programs"

Amends Section 5.9.08 – "Medical Fees and Payments"

Amends Section 5.9.10 from "Post-Retirement Medical Benefits"

Amends Section 5.10.04 – "Vocational Rehabilitation Program Goals"

Amends Section 5.10.06 – "Vocational Rehabilitation Program Eligibility"

Amends Section 5.10.07 – "Vocational Rehabilitation Plan"

Amends Section 5.10.08 – "Cooperation in Vocational Rehabilitation"

Amends Section 5.10.10 – "Suspension, Reduction or Termination of Benefits"

Amends Section 5.10.11 – "Cessation of Eligibility for Vocational Rehabilitation Services"

Amends Section 5.10.12 – "Vocational Rehabilitation Expenses"

Amends Section 5.10.13 – "Right to Request a Different Vocational Rehabilitation Specialist"

EXHIBIT "B"

(Sections of proposed Administrative Rules as listed on Exhibit A - Resolution No. 479)

5.4.13 – FPDR TWO VESTED TERMINATION

(A) Termination prior to January 1, 2013: An FPDR Two Member who has completed five Years of Service and whose employment with the Bureau of Fire or Police terminates prior to January 1, 2013 shall be eligible for an increase in his or her benefit on vested termination if the FPDR Two Member is employed after termination in service recognized by the Public Employees Retirement System of the State of Oregon for accrual of benefits or as a waiting period before such accrual ~~agains~~***begins***. The benefit on vested termination shall be increased in the same proportion as any increases during the period of such service in the rate of Base Pay for the FPDR Two Member's position in the Bureau of Fire or Police held at termination.

(B) Termination on or after January 1, 2013: An FPDR Two Member who has completed five Years of Service and whose employment with the Bureau of Fire or Police terminates on or after January 1, 2013 shall not be eligible for an increase in his or her benefit on vested termination based on subsequent employment.

5.5.09 – FPDR TWO AND THREE MEMBER BENEFITS ON NONSERVICE-CONNECTED DEATH BEFORE RETIREMENT

(A) Eligibility:

(1) Surviving Spouse: A Surviving Spouse of a Member who has one or more Years of Service and dies before retirement not as a result of ~~a~~ an illness or injury that qualifies as service-connected or occupational death, shall be eligible to receive a death benefit.

(2) Dependent Minor Child or children:

(a) A Dependent Minor Child of such a Member shall be eligible to receive the benefit if the Member has no Surviving Spouse or if the spouse is under age 55 years. If the Member has more than one Dependent Minor Child, the benefit payable to the children shall be divided equally among them.

(b) If the Member has a Surviving Spouse and one or more Dependent Minor Children of a former marriage, one-half the benefit shall be paid to the Surviving Spouse. The other half shall be paid to the Dependent Minor Children of a former marriage until the last ceases to be minor and then paid to the Surviving Spouse. If the Member has more than one Dependent Minor Child, the benefit payable to the children shall be divided equally among them.

(c) Any Dependent Minor Child's interest in said benefit shall cease when the child is no longer a Dependent Minor Child as defined herein.

(B) Exception for Death while on Qualified Military Service: If an FPDR Two or Three Member dies while on qualified military service on or after January 1, 2007, the Member's Years of Service includes the time the Member spent on qualified military service for the purpose of determining eligiblity for the amount and form of the benefit addressed in (C) and (D) below. Years of Service retains its standard definition for the computation of the amount of the benefit in (C).

~~(B)~~***(C)*** Amount of Benefit:

(1) Amount of benefit for death before five Years of Service:

(a) The benefit shall be a lump sum equal to the amount of the Member's contributions as provided in 5-305 (d)(1) of Chapter 5, less any benefit paid to the Member under this Chapter. This is a taxable benefit.

(b) No benefit is payable to the survivors of a FPDR Two Member who had not made contributions to the Fund prior to July 1, 1990.

(c) Survivors of a FPDR Three Member would not be eligible for a lump sum benefit as there would be no situations where said member would have made contributions to the Fund prior to July 1, 1990.

(2) Amount of benefit for death after five Years of Service:

(a) If the FPDR Two Member had five or more Years of Service, the benefit shall be an annuity equal to 50 percent of the Member's accrued retirement benefit under Section 5-304 of Chapter 5, based on 2.6 percent of the Member's Final Pay instead of 2.2 percent. This is a taxable benefit.

(b) If the FPDR Three Member had five or more Years of Service, the benefit shall be an annuity equal to 50 percent of what the Member's accrued retirement benefit under Section 5-304 of Chapter 5 would have been if the Member had been an FPDR Two Member, based on 2.6 percent of the Member's Final Pay instead of 2.2 percent. This is a taxable benefit.

(D) Form of Benefit:

(1) Less than five Years of Service: A benefit payable shall be in a lump sum.

(2) More than five Years of Service:

(a) Surviving Spouse shall be paid the benefit monthly commencing with the Month after the Member's death if the spouse is age 55 or over and otherwise with the month after the spouse attains age 55 and shall continue for the spouse's life.

(b) A Dependent Minor Child shall be paid commencing with the month after the Member's death and shall continue until the child ceases to be a minor.

(c) The benefit will be suspended in cases where there is a gap between when the last Dependent Minor Child ceases to be a minor and when the Surviving Spouse attains age 55.

(d) The benefit will resume to the Surviving Spouse beginning the month after the spouse attains age 55, at the level that was payable when the benefit was suspended and with no adjustment in the interim.

(e) The benefit shall be adjusted after payment commences. The Board shall determine the amount and timing of such adjustments in its discretion, except the percentage rate of change shall not exceed the

percentage rate applied to retirement benefits payable to police and fire employees by PERS.

(E) Offset: The monthly amount of nonservice-connected death benefits under Chapter 5 of the City Charter shall be reduced by any monthly death benefit payable made by PERS up to the amount provided in this section. The Director shall reduce any nonservice-connected death benefit payable under Chapter 5 in the amount determined to be necessary by the Director to meet the limitation imposed by this subsection.

(F) More Than One Status: No person shall receive more than one survivor benefit under Chapter 5 at the same time, despite qualifying under more than one category, or qualifying with respect to more than one Member. A person so qualifying shall receive in any month the greatest of the benefits payable for that month.

5.7.04 – CLAIM APPROVAL OR DENIAL

(A) Disability Claim applications fall into one of the following two categories:

(1) Service-Connected Disability Claims – Except for stress or mental disorder claims, the Director shall determine the existence of a disability and whether the preponderance of the evidence indicates it arises out of and in the course of the Member's employment.

A Member shall not be eligible for the service-connected disability benefit based on an injury suffered in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties or incurred while engaging in, or as the result of engaging in, any recreational or social activities solely for the Member's personal pleasure. (Relocated from after (e) below.)

Stress or Mental Disorder Claims – The Director shall determine if each of the following elements exists:

(a) The employment conditions producing the stress or mental disorder exist in a real and objective sense;

(b) The employment conditions producing the stress or mental disorder are conditions other than conditions generally inherent in police and fire employment or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment;

(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical ~~and~~ ***or*** psychological community;

(d) There is clear and convincing evidence that the stress or mental disorder arose out of and in the course of employment as an Active Member; and

(e) The Member's employment conditions are the primary cause of the stress or mental disorder.

~~A Member shall not be eligible for the service-connected disability benefit based on an injury suffered in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties or incurred while engaging in, or as the result of engaging in, any recreational or social activities solely for the Member's personal pleasure.~~

(2) Occupational Disability Claims – The Director shall presume a Member is eligible for an occupational disability enumerated in 5-306(c) of the City Charter unless the Director determines, by a preponderance of the

evidence, the occupational disability was not contracted as a result of service as a police officer or fire fighter.

(B) The Director shall provide written notification of Claim approval or Claim denial to the Member or the Member's representative, and the Member's ~~a~~***A***ttending ~~p~~***P***hysician within sixty (60) days of the Director's receipt of a written application for benefits. This applies to the initial claim for benefits and subsequent Claims for Recurrence or Aggravation benefits.

(1) Notice of Approval – A Notice of Approval shall be addressed to the Member and include the mailing date of the notice, and the statement that the ~~injury/illness~~ ***service-connected injury/illness or occupational disability*** occurring on the particular date has been approved. The notice also shall include information on how the Member can request reimbursement for covered expenses personally paid for by the Member.

(2) Notice of Denial – A Notice of Denial shall be addressed to the Member and include the mailing date of the notice, and be sent via certified mail. The notice also shall include the factual and legal reasons for the denial, and a statement on the Member's right to appeal the denial to an independent hearings officer for review.

(C) If sufficient information is not available within sixty (60) days of the Director's receipt of a written application for benefits, FPDR will provide a written notice to the Member on the status of the review. If a Notice of Approval or Notice of Denial issues more than 90 days from ~~of~~ the Director's receipt of a written application for benefits, then the claim will be deemed denied and the Member may file a written request for hearing with the Director.

5.7.05 – <u>AMOUNT OF BENEFITS</u>

During the period the Member continues to be eligible under this section, benefits shall be paid as follows:

(A) First year from date of disability:

(1) During the first year from the date of disability, the Member shall be paid 75 percent of the Member's rate of Base Pay in e***E***ffect at ~~d~~***D***isability.

(2) The Member's disability benefit rate shall be reduced by 50 percent of any wages earned in other employment during the period the benefit is payable.

(B) Second year from date of disability and after:

(1) The Member shall continue to be paid the benefit described in "Paragraph A" after one year from the date of disability until the earliest date on which the Member is both medically stationary and capable of Substantial Gainful Activity.

(C) Fourth anniversary of the date of disability:

(1) If not medically stationary sooner, the Member shall be deemed medically stationary for purposes of this Section on the fourth anniversary of the date of disability, regardless of the status of the Member's medical condition.

(2) If the Member is incapable of Substantial Gainful Activity, the benefit will remain at 75 percent of the Member's rate of Base Pay in e***E***ffect at d***D***isability.

(3) If the Member is capable of Substantial Gainful Activity, the benefit shall be 50 percent of the Member's rate of Base Pay ***in Effect*** at d***D***isability, reduced by 25 percent of any wages earned in other employment during the same period.

(D) The minimum benefit shall be 25 percent of the Member's rate of Base Pay ***in Effect at Disability***, regardless of the amount of wages earned in other employment.

(E) Notwithstanding any other provision of the Chapter ***5*** or ***of*** the City Charter, or ***a disabled Member receiving or eligible to receive service-connected or*** O***o***ccupational D***d***isability B***b***enefits under Section 5-306 shall not receive any such benefit for periods of time during which the Member is incarcerated subsequent to and for the conviction of a crime. One-half of such benefit, however, shall be payable to the Member's spouse, if not incarcerated, or Member's minor children, during such periods of incarceration. ***FPDR reserves the right to recover overpaid amounts in situations where a Member has been incarcerated for a period of time prior to conviction of a crime and the sentence is for time served.***

* * *

5.7.07 – TRANSITIONAL DUTY PROGRAM

Whenever the Director has medical evidence that a Member who is receiving disability benefits is capable of performing limited transitional duty the Director shall notify the Member's Bureau Chief ***or designee*** of that fact. Included in the notification will be a report of the m***M***ember's limitations and a request that the Bureau Chief provide the Member with a job that is compatible with the Member's limitations. Refer to Section 5.10 of these Administrative Rules for additional information on this program.

* * *

5.7.09 – RECIPIENT OF DISABILITY BENEFITS

(A) All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member's identified Attending Physician or an Attending Physician appointed by the Director, unless otherwise determined by the Director. ***The purpose of the examination will be to determine if the Member's approved service-connected injury/illness or occupational disability condition(s) continue to prevent the Member from performing the Member's*** r***R***equired d***D***uties ***in the Fire or Police Bureaus. (Relocated from 5.7.02 (3) and (4).)***

(B) Any Member receiving disability benefits under the Plan shall file with the Director a certificate from the Member's Attending or Specialty Physician of the Member's continued disability for each ***disability*** pay period, unless otherwise waived by the Director.

(C) A Member receiving service-connected ***injury/illness or occupational*** disability benefits, under Article 3 of the Plan, who is released to modified duty and capable of ~~s~~***S***ubstantial ~~g~~***G***ainful ~~a~~***A***ctivity, but who is unable to return to the ~~B~~***b***ureau, 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.

* * *

5.7.11 – <u>SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS</u>

~~(A) Non-cooperation in vocational rehabilitation or failure to pursue other employment. For service-connected and occupational disability benefits under Article 3, if the Director obtains evidence that the Member is not cooperating in vocational rehabilitation, including participating in a Substantial Gainful Activity Assessment, or is not pursuing other employment, the Director shall notify the 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 reconsideration. 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.~~

~~(B)~~***(A)*** Service-connected and ~~o~~Occupational ~~d~~***D***isability b***B***enefits ~~under Article 3 –~~

The Director may determine to suspend, reduce or terminate benefits for service connected and occupational disability benefits ~~under Article 3 of the Charter,~~ if the Director obtains evidence that:

(1) The Member is not cooperating in treatment;

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

(3) 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 ***FPDR*** a***A***dministrative ~~r~~***R***ules;

(4) The Member is no longer disabled or eligible;

(5) The Member's ~~injury/illness~~ ***service-connected injury/illness or occupational disability*** no longer arises out of and in the course of the Member's employment with the Bureau of Fire and Rescue or the Police Bureau, as provided for in Section 5-306 of the Charter.

(6) The Member has engaged in fraud or a material misrepresentation;

(7) The Member has failed to seek other employment once he/she has been deemed capable of s***S***ubstantial ~~g~~***G***ainful ~~a~~***A***ctivity, or has achieved his/her vocational rehabilitation goals;

(8) The Member has failed to provide notification and request approval to engage in other employment within the specified ~~time frame~~ ***timeframe***.

(9) The Member has failed to provide other/outside wage information to allow for wage offset purposes within the specified ~~time frame~~ ***timeframe***; or

(10) The Member has failed to participate in an Independent Medical Examination or other Director arranged medical or mental examination.

(11) The Member is not cooperating in vocational rehabilitation, including participating in a Substantial Gainful Activity assessment.

~~(C)~~***(B)*** 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~~ ***nonprivileged*** evidence upon which the recommendation is based. The Member will have 14 days to provide a written request for the Director's reconsideration. The Member shall also be notified of the rights under Charter Section 5-202(h) ~~and the right~~ to appeal ~~for a hearing~~ ***the decision*** as provided for in Section ~~3~~ ***5.6*** of these ***FPDR*** Administrative Rules. 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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5.7.13 – PERS OFFSET

FPDR ~~D~~***d***isability benefits will be offset by ***Public Employees Retirement System (***PERS***)*** ~~D~~***d***isability ~~B~~***b***enefits pursuant to Chapter 5 of the City Charter.

5.8.02 – DISABILITY BENEFITS GENERALLY

(A) Payment of Disability Benefits - Disability benefits will be paid to a Member only during such time as the Member is unable to perform his or her ~~r~~*R*equired ~~d~~*D*uties in the Bureau of Fire ~~and Rescue~~ 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 ~~r~~*R*equired ~~d~~*D*uties 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) Changes ~~in~~ ***Related to Member*** Employment Status While on Disability

(1) If Member is demoted during the time that he/she is receiving disability benefits, his/her disability benefit will be based on the Base Pay of the position held at the time the Member first became disabled on the Claim.

(2) If Member is demoted and is not receiving disability benefits at the time of demotion, and later begins receiving disability benefits, said benefits will be based on the reduced base wage of the new classification.

(3) If Member is promoted during the time that he/she is receiving disability benefits, his/her disability benefit will be based on the Base Pay of the Member's new position.

* * *

5.8.04 ELIGIBILITY

An Active Member shall be eligible for the nonservice-connected disability benefit if the Member has 10 or more Years of Service and is unable to perform the Member's ~~r~~*R*equired ~~d~~*D*uties because of an injury or illness that does not qualify as ***a*** service-connected ***injury/illness*** or ***an*** occupational ***disability*** under subsection 5-306(a), (b) or (c) of Chapter 5 of the City Charter.

5.8.05 CLAIM APPROVAL OR DENIAL

(A) No Member shall receive nonservice-connected disability benefits for disabilities resulting from the following:

(1) Willful injuries;

(2) Injuries sustained while, or illness contracted as a result of, willfully doing an unlawful act; or

(3) Weakness, illness or disability resulting directly or indirectly from the habitual excessive use of or addiction to use of alcoholic beverages or illegal drugs.

(B) The Director shall provide written notification of Claim approval or Claim denial to the Member or the Member's representative, and the Member's ~~a~~***A***ttending ~~p~~***P***hysician within sixty (60) days of the Director's receipt of a written application for benefits. This applies to the initial Claim for benefits and subsequent Claims for recurrence or aggravation benefits.

(2) Notice of Approval – A Notice of Approval shall be addressed to the Member and include the mailing date of the notice, and the statement that the ~~N~~***n***onservice-connected disability claim has been approved.

(2) Notice of Denial – A Notice of Denial shall be addressed to the Member and include the mailing date of the notice, and be sent via certified mail. The notice also shall include the factual and legal reasons for the denial, and a statement on the Member's right to appeal the denial to an independent hearings officer for review.

(C) If sufficient information is not available within sixty (60) days of the Director's receipt of a written application for benefits, FPDR will provide a written notice to the Member on the status of the review. If a Notice of Approval or Notice of Denial issues more than 90 days from of the Director's receipt of a written application for benefits, then the Claim will be deemed denied and the Member may file a written request for hearing with the Director.

5.8.06 AMOUNT OF BENEFITS

(A) The benefit shall be 50 percent of the Member's Base Pay ***in Effect*** at ~~d~~***D***isability, reduced by 50 percent of any wages the Member earns in other employment during the period the benefit is payable. The Director may reduce, suspend or terminate the benefit if the Member does not cooperate in treatment of the disability or in vocational rehabilitation or does not pursue other employment.

(B) Notwithstanding any other provision of the Chapter or the City Charter, a disabled Member receiving or eligible to receive ~~N~~***n***onservice-~~C~~***c***onnected ~~D~~***d***isability ~~B~~***b***enefits under Section 5-307, shall not receive any such benefit for periods of time during which the Member is incarcerated subsequent to and for the conviction of a crime. ***FPDR reserves the right to recover overpaid amounts in situations where a Member has been incarcerated for a period of time prior to conviction of a crime and the sentence is for time served.***

5.8.07 FORM OF BENEFITS

The nonservice-connected disability benefit shall be payable monthly from the Date of Disability. The Director may pay this benefit in some other form as deemed appropriate, but no less frequently than monthly. The amount shall be adjusted to reflect changes in the rate of Base Pay of the position held by the Member at disability. The benefit shall cease when the Member reaches Disability Retirement Age under subsection 5-304(a) ***and Section 5.8.16 of this Administrative Rule***.

5.8.08 – TRANSITIONAL DUTY PROGRAM

Whenever the Director has medical evidence that a Member who is receiving disability benefits is capable of performing limited transitional duty the Director shall notify the Member's Bureau Chief or designee of that fact. Included in the notification will be a report of the ~~m~~***M***ember's limitations and a request that the Bureau Chief ***or designee*** provide the Member with a job that is compatible with the Member's limitations. Members' cooperation with the return to work program is a requirement of the ~~Non-Service~~ ***nonservice-connected disability*** benefits program. Refer to Section 5.10 of these Administrative Rules for additional information on this program.

* * *

5.8.10 – RECIPIENT OF DISABILITY BENEFITS

(A) All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member's identified Attending Physician or an Attending Physician appointed by the Director, unless otherwise determined by the Director. ***The purpose of the examination will be to determine if the Member's approved nonservice-connected injury/illness condition(s) continue to prevent the member from performing the Member's*** ~~r~~***R***~~equired d~~***D***~~uties~~ ***in the Fire or Police Bureau.***

(B) Any Member receiving disability benefits under the Plan shall file with the Director a certificate from the Member's Attending or Specialty Physician of the Member's continued disability for each ***disability*** pay period, unless otherwise waived by the Director.

~~(C) A Member receiving nonservice-connected injury/illness 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.~~

* * *

5.8.12 – SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS

~~(A) Non-cooperation in vocational rehabilitation or failure to pursue other employment. For nonservice-connected disability benefits under Article 3, if the Director obtains evidence that the Member is not cooperating in vocational rehabilitation, including participating in a Suitable Gainful Activity Assessment, 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 non-service connected disability benefits the Director may reduce, suspend 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.~~

~~(B)~~***(A)*** The Director may determine to suspend, reduce or terminate benefits for nonservice-connected disability benefits under Article 3 of the Charter, if the Director obtains evidence that:

(1) The Member is not cooperating in treatment;

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

(3) The Member is not cooperating in the administration of the e***C***laim and/or fulfilling the Member's duties and obligations under the Charter and the ***FPDR*** a***A***dministrative ~~r~~***R***ules;

(4) The Member is no longer disabled or eligible;

(5) The Member has engaged in fraud or a material misrepresentation;

(6) The Member has failed to seek other employment once he/she has been deemed capable of s***S***ubstantial g***G***ainful a***A***ctivity, or has achieved his/her vocational rehabilitation goals;

(7) The Member has failed to provide notification and request approval to engage in other employment within the specified ~~time frame~~ ***timeframe***;

(8) The Member has failed to provide other/outside wage information to allow for wage offset purposes within the specified ~~time frame~~ ***timeframe***; or

~~(9) The Member has failed to participate in an Independent Medical Examination or other Director arranged medical or mental examination.~~

(10)***(9) The Member is not cooperating in vocational rehabilitation, including participating in a Substantial Gainful Activity assessment.***

(B) 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 nonprivileged evidence upon which the recommendation is based. The Member will have 14 days to provide a written request for the Director's reconsideration. The Member shall also be

notified of the rights under Charter Section 5-202(h) to appeal the decision as provided for in Section 5.6 of the FPDR Administrative Rules. 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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5.8.14 – PERS OFFSET

FPDR Disability benefits will be offset by ***Public Employees Retirement System (***PERS***)*** ~~D~~***d***isability ~~B~~***b***enefits pursuant to Chapter 5 of the City Charter.

5.9.02 – RECIPIENTS OF DISABILITY BENEFITS

All Members drawing disability benefits, of whatever nature shall identify a physician as defined in and under the conditions prescribed for under "~~Primary~~ ***Attending*** Physician" in Section 5.9.01 of this Administrative Rule.

5.9.03 – MEDICAL SERVICES

(A) Reimbursement for actual, reasonable and necessary expenses, as determined by the Director, ***paid for or*** 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 ***paid for or*** 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 ***making payment for or*** 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 until ***after*** the required 60 days.

(9) Medical or hospital service providers that have fee ~~arrangements~~ ***agreements*** with the ~~Board~~ ***Director***. Notwithstanding the provisions of subsection (1) above, 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 or organizations that have fee ~~arrangements~~ ***agreements*** with the ~~Board~~ ***Director***, except in those circumstances described in subparagraph (~~3~~***10***) below. A listing of such providers shall be on file in and available from the Director's office.

Medical or hospital service providers or organizations that have a fee arrangement agreement with the ~~Board~~ ***Director*** shall provide Medical Services to Members that are subject to the terms and conditions of said agreement.

(10) Medical or hospital service providers that do not have a fee ~~arrangement~~ agreement with the ~~Board~~ ***Director***. 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~~ ***agreements*** with the ~~Board~~ ***Director***, in the circumstances described below. Payment directly to the provider will be considered to be reimbursement to the Member.

(a) The Member has a life-threatening emergency requiring immediate medical care at the nearest emergency facility. ~~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.

(b) The Member is traveling in an area in which there are no providers who have a fee ~~arrangement~~ ***agreement*** with the ~~Board~~ ***Director*** and a service-connected ~~or occupational~~ injury or illness or ***occupational disability*** requires immediate medical treatment.

~~(c) The Member is referred by either the Bureau of Police or the Bureau of Fire~~ and Rescue ~~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.~~

~~(d) 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 ~~***agreement*** with the~~ Board ~~***Director*** 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 ~~***Director.***~~

(11) Medical treatment and services provided by approved health care providers must be consistent with the nature of the approved ***service-connected*** injury or ***illness or occupational*** ~~disease~~ ***disability***, and care that is reasonable and necessary to promote recovery.

(B) The Director reserves the right to request of the Member's ~~Primary~~ ***Attending*** or Specialty Physician, evidence of the frequency, extent and efficacy of treatment and services.

(C) Ancillary Services provided by a health care provider other than the Member's ~~Primary~~ ***Attending*** Physician will not be reimbursed unless prescribed by the Member's ~~Primary~~ ***Attending*** or Specialty Physician. These services must be according to a treatment plan that has been provided to the Member's ~~Primary~~ ***Attending*** or Specialty Physician within a reasonable time of when the ancillary treatment begins. The treatment plan must include the following:

(1) Objectives of planned treatment;

(2) Description of modalities to be provided;

(3) Frequency of treatments; and

(4) Duration of treatments.

The Member's ~~Primary~~ ***Attending*** or Specialty Physician shall sign off on the ancillary treatment plan and send a copy to the Director.

5.9.04 – MEDICAL SERVICES GUIDELINES

Medical Services provided to the injured Member must not be more than is reasonable and necessary to treat the approved service-connected injury/illness or occupational disability. The Director may deny services that are shown to be more than the nature of the approved ***service-connected*** injury/illness ***or occupational disability,*** or the process of recovery requires. Accepted professional standards will be relied upon in making these determinations.

(A) The utilization and treatment standard for physical therapy included in any fee arrangement agreement with a medical or hospital service provider will be followed. If none exists, the number and duration of therapy visits covered will not exceed what is medically reasonable and necessary under accepted professional standards. The Member's ~~Primary~~ ***Attending*** or Specialty Physician will be required to provide the Director with a written explanation for visits exceeding this standard.

(B) Attending Physicians may prescribe treatment or services to be carried out by persons not licensed to provide a Medical Service or treat independently only when such services or treatment is rendered under the ***Attending or Specialty*** ~~p~~*P*hysician's direction.

(C) Massage therapy not administered under the direct oversight of a***n Attending*** ~~p~~*P*hysician must comply with the requirements for "Ancillary Services" in these rules.

(D) Prescription ~~D~~*d*rugs may be purchased by the Member at a pharmacy of the Member's choice. The Director may ask that the Member access the services of providers that the ~~Board~~ ***Director*** has made fee ~~arrangements~~ ***agreements*** with. Except in an emergency, drugs and medicine for oral consumption supplied by a***n Attending*** ~~p~~*P*hysician must not exceed that which is medically necessary to treat the Member.

(E) Post-Medically Stationary medical care may fall into one of the following categories:

Curative Care – Medical care necessary to stabilize a temporary and acute flare up of symptoms of the Member's condition; or

Palliative Care - Medical care that is reasonable and necessary to reduce or temporarily moderate the intensity of an otherwise stable condition and/or is reasonable and necessary to enable the Member to continue current employment or a vocational training program.

In both cases, the Member's ~~Primary~~ ***Attending*** Physician will be required to submit to the Director a written request that provides the following:

(1) A description of the objective findings;

(2) The diagnosed medical condition for which the care is being requested, to include the appropriate ICD-9-CM diagnosis code;

(3) Provide an explanation of how and why requested care is reasonable and necessary and will improve the Member's condition; and/or is reasonable and necessary to enable the Member to continue current employment or a vocational training program.

(4) A description of how the care is medically reasonable and necessary to treat the approved Claim.

5.9.05 – ~~NON-COVERED~~ *NONCOVERED* SERVICES

(A) Medical treatment that is excessive, unscientific, unproven as to its effectiveness, outmoded, inappropriate or experimental in nature is not reimbursable. Accepted professional standards will be relied upon in making these determinations.

(B) Dietary supplements, unless prescribed by the Member's ~~Primary~~ ***Attending*** or Specialty Physician specifically as medical treatment for an approved dietary

deficient***cy*** condition are not reimbursable.

(C) Articles including but not limited to beds, hot tubs, chairs, Jacuzzis, and gravity traction devices are not covered unless a need is clearly justified by a report which establishes that the "nature of the injury or the process of recovery requires" the item be furnished. The report must specifically set forth why the Member requires an item not usually considered necessary in the great majority of workers with similar impairments.

(D) Trips to spas, to resorts or retreats, whether prescribed or in association with a holistic medicine regimen, are not reimbursable unless special medical circumstances are shown to exist that render such treatment medically reasonable and necessary.

(E) Physical Restorative Services may include but are not limited to a regular exercise program, gym membership or swim therapy. Such services are not compensable unless the nature of the Member's limitations requires specialized services to allow the worker a reasonable level of social and/or functional activity. The Attending Physician must justify by report why the Member requires services not usually considered necessary for the majority of injured workers.

(F) The Director may deny services that are shown to be more than the nature of the approved ***service-connected*** injury/illness or ***occupational disability or*** the process of recovery requires. Accepted professional standards will be relied upon in making these determinations.

* * *

5.9.07 – <u>MEDICAL MANAGEMENT PROGRAMS</u>

(A) Clinical Case Management – the use of a combination of medical professionals (nurses and physicians) to manage or assist in managing the medical and disability aspects of service-connected ***injury/illness*** and occupational disability Claims.

(1) Typical clinical case management providers and services may include telephonic and field nurse case management services, utilization management, and physician advisor.

(2) A Nurse Case Manager may be assigned to monitor and track recovery of a Member's approved injury***/illness*** Claim when deemed appropriate by the Director.

(a) Members are required to cooperate with the Nurse Case Manager assigned to their injury***/illness*** Claim. Cooperation includes submitting to personal and/or phone contact and answering relevant medical and vocational questions posed to them by the Nurse Case Manager.

(b) Members may decline to allow the Nurse Case Manager to accompany them to their medical appointments.

(c) Members may request a change of Nurse Case Manager. However, it is at the discretion of the Director to assign a new ~~n~~***N***urse ~~c~~***C***ase ~~m~~***M***anager.

(B) Utilization Review - FPDR may require the use of utilization review services to provide pre-certification of surgical and specialty care prior to approval of the Medical Service. ***The Director may deny a Medical Services request if utilization review services deny precertification of such request.***

5.9.08 – MEDICAL FEES AND PAYMENTS

(A) The Director may contract with medical or hospital service providers or groups of providers for medical or hospital services and enter into fee ~~arrangement~~ agreements with such to reimburse medical fees of approved Claims under these rules.

(B) Health care providers will submit their fees for services rendered pursuant to current Charter and ***FPDR*** ~~a~~***A***dministrative ~~r~~***R***ules. Billings must be itemized and include Chart Notes, and must be submitted directly to FPDR~~.~~***, no later than 90 days from the date of service or in accordance with the terms of their provider panel agreement with whom FPDR is contracted. A health care provider must establish good cause if billing is submitted later than 90 days from the date of service or in accordance with the terms of their provider panel agreement with whom FPDR is ontracted. Failure to show good cause may result in a reduction or nonpayment of allowable charges. Members will be "held harmless" by the health care provider for any costs that, if not for late submission, would have been covered by FPDR.***

(C) Medical fees will be reimbursed according to the fee ~~arrangement~~ agreements made between the medical providers and FPDR.

(D) If no fee ~~arrangement~~ agreement has been made with the medical provider, and the service complies with these administrative rules in all other respects, FPDR will reimburse at the "Usual and Customary Fee" for the Medical Service.

(E) FPDR payment shall be considered payment in full. Members will be "held harmless" by the medical provider for any costs above the usual and customary ~~fee schedule~~ ***rate, as defined in 5.9.01 of these Administrative Rules,*** or an agreed upon fee ~~arrangement~~ ***agreement*** amount payable by FPDR on an otherwise approved billing.

(F) FPDR will date stamp each medical bill received. Bills for services rendered on approved Claims will be adjudicated within 30 days of receipt. Payments will be in accordance with adopted fee schedules.

(G) If there is a dispute concerning the amount of a bill, the appropriateness of the service rendered, or the relationship of the services to the approved Claim, FPDR must pay any undisputed portion of the bill and notify the provider of the specific reasons for ~~non-payment~~ ***nonpayment*** or reduction of the remainder of the bill.

5.9.10 – POST-RETIREMENT MEDICAL BENEFITS

(A) Disability Retirement – Medical and hospital expenses arising from an approved service-connected ***injury/illness*** or occupational ~~injury/illness~~ ***disability*** shall be reimbursable, if the Member's disability benefits continued until the Member reached Disability Retirement Age.

(B) Service Retirement – For Members who are retired as of January 1, 2007, medical and hospital expenses arising from an approved service-connected ***injury/illness*** or occupational ~~injury/illness~~ ***disability*** shall not be reimbursable.

(C) Service Retirement – For Members who are not retired before January 1, 2007, medical and hospital expenses arising from an approved service-connected ***injury/illness*** or occupational ~~injury/illness~~ ***disability*** shall be reimbursable.

(D) The Director shall deny the Claim for medical or hospital expense if the Director determines by a Preponderance of the Evidence that a Claim under subsection (C) from a retired Member is due to the following:

(1) Medical or hospital expenses related to an injury/illness that was based upon fraud, misrepresentation, an omission, or illegal activity by the Member, or

(2) Medical or hospital expenses related to an injury/illness that was accepted in good faith, in a case not involving fraud, misrepresentation, an omission, or illegal activity by the Member, and within two (2) years of the initial acceptance the Director obtains evidence that the Claim is not a service-connected or occupational illness/injury or FPDR is not responsible for the injury/illness, or

(3) Medical or hospital expenses are not related to the service-connected injury/illness ***or occupational disability***.

5.10.04 – VOCATIONAL REHABILITATION PROGRAM GOALS

The goals of a Vocational Rehabilitation program are to assess the feasibility and benefit of Vocational Rehabilitation services to the Fund and the disabled Member; and

(A) Return the Member to his or her former job with the Bureau of Fire~~, Rescue and Emergency Services~~ or the Bureau of Police; or

(B) Return the Member to the same (but modified) job with the Bureau of Fire~~, Rescue and Emergency Services~~ or the Bureau of Police; or

(C) 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, or with another City of Portland agency; or

(D) Return the Member to work, performing a different job that capitalizes on Transferable Skills with a different employer; or

(E) 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, another City of Portland agency or a different employer.

* * *

5.10.06 – VOCATIONAL REHABILITATION PROGRAM ELIGIBILITY

(A) A Member is eligible for Vocational Rehabilitation ~~S~~*s*ervices when:

(1) The Member has fully participated in a~~n~~ ***Vocational*** ~~a~~***A***ssessment as provided in these ***Administrative*** Rules; and

(2) Vocational Rehabilitation services and associated costs are reasonably expected to reduce overall disability benefits that would likely be incurred until the Member~~'s~~ ***reaches*** Disability Retirement ~~date~~ ***Age***.

(B) 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 ~~"s~~***S***ubstantial ~~g~~***G***ainful ~~a~~***A***ctivity~~"~~, as defined in these ~~a~~ ***A***dministrative ~~r~~***R***ules.

(C) ~~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 total until the Member's mandatory retirement date with completion of the Vocational Rehabilitation services.~~

A Member who is determined to be capable of Substantial Gainful Activity may be approved for Vocational Rehabilitation services only if, after analysis, the Director determines that there is a reasonable likelihood that such services will result in a reduction in disability costs.

5.10.07– VOCATIONAL REHABILITATION PLAN

(A) A Member who is determined ***to be*** eligible for Vocational Rehabilitation services, along with a Vocational Rehabilitation specialist, will develop a specifically achievable Vocational Rehabilitation plan.

(B) The components of the Vocational Rehabilitation plan may include but not be limited to:

(1) ~~w~~***W***ritten vocational goals and objectives;
(2) ~~t~~***T***he actions that must be taken to achieve the goals and objectives;

(3) ~~t~~***T***he services (including any recommended training) needed to fulfill the plan;

(4) ~~t~~***T***he projected start date and completion date of the actions to be taken and services to be provided;

(5) ~~t~~***T***he job-seeking and placement-related activities that will facilitate securing employment;

(6) ~~t~~***T***he way in which progress towards completing the plan will be evaluated; and

(7) ~~t~~***T***he cost of the services and other expenses associated with the plan.

(C) The ~~m~~***M***ember will have the option of choosing to have future disability benefits reduced to the 25% minimum upon successful completion (or 60 days after successful completion) of a vocational training program, in lieu of submitting wage information to FPDR for purpose of wage offset.

(D) ~~PLAN TYPES~~ ***Vocational Rehabilitation plan types include:***

(1) Return to Work Plans - Services that are geared toward the Member being provided:

(a) A bona fide offer of return 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; or

(b) A bona fide offer of return to work, performing a different job that capitalizes on Transferable Skills with another City of Portland agency.

(2) Direct Employment Plans – Services provided to a Member who has the necessary ~~t~~***T***ransferable ~~work~~ ~~s~~***S***kills to obtain suitable new employment with earnings equal to or exceeding one-third of the Member's rate of Base Pay ***in Effect*** at disability. Direct Employment Services may consist of one or more of the following:

(a) Employment Counseling.

(b) Job Search Skills Instruction.

(c) Job Development.

(d) Job Analysis.

(3) Training Programs – 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 ~~B~~*b*ureau which employed the Member.

~~(b)~~*(a)* Training program services shall include plan development, training, monthly monitoring of training progress, and job placement services if necessary.

(b) Training program services shall be limited to an aggregate of 16 months. As appropriate, the Director may allow an extension to 21 months, an additional 5 months.

(c) Training plan objectives and the kind of training shall attempt to minimize the length and cost of training necessary to prepare the Member for suitable employment.

(4) Optional Services – Optional services are limited services which may be provided to a Member and may be provided to an otherwise ineligible Member or to an eligible Member in excess of those ***services*** described in these Administrative Rules. 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 5.10.11 (K) of*** these Administrative Rules.

5.10.08 – <u>COOPERATION IN VOCATIONAL REHABILITATION</u>

(A) ~~A Member who meets the criteria for an assessment under Section 5.10.05 shall cooperate in Vocational Rehabilitation. "Cooperate in Vocational Rehabilitation" means:~~
A Member receiving disability benefits must cooperate in Vocational Rehabilitation processes as follows:

(1) Fully participate in an assessment of Substantial Gainful Activity and the feasibility of Vocational Rehabilitation;

(2) If determined capable of Substantial Gainful Activity without retraining, participate in any Direct Employment ***or other Optional*** Services available in these rules.

(3) If determined eligible for Vocational Rehabilitation, cooperate in the development of a reasonable and specifically achievable ~~v~~*V*ocational

~~r~~*R*ehabilitation plan consistent with the purpose and goals of ~~v~~*V*ocational ~~r~~*R*ehabilitation;

(4) Fully participate in the approved Vocational Rehabilitation plan; and

(5) Upon completion of an approved Vocational Rehabilitation ~~services~~ plan, the Member ~~"p~~*P*ursues ~~o~~*O*ther e*E*mployment,~~"~~ as defined in these ***Administrative*** ~~r~~*R*ules, in the field for which the Vocational Rehabilitation services were provided.

(B) For service-connected ***injury/illness*** or occupational disability benefits, a Member's failure to cooperate in any Vocational Rehabilitation services or plans may result in suspension or reduction of benefits.

(C) For nonservice-connected disability benefits, a Member's failure to cooperate in any Vocational Rehabilitation services or plans may result in reduction or termination of benefits.

* * *

5.10.10 – SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS

(A) 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.

(B) The Member shall be notified of the rights under Charter Section 5-202(h) (3) ~~of the right~~ to appeal ~~for a Hearing~~ ***the decision***. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.

5.10.11 – 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:

(A) The applicable purpose and goals of the Vocational Rehabilitation ~~program~~ ***plan*** referred to in this ~~section of the~~ Administrative Rules have been attained.

(B) The Member has been employed with the ~~B~~***b***ureau of which he or she was a Member at the time of becoming disabled for 60 days, ~~or~~ has been employed by another ***bureau or*** employer or ***has*** been self-employed for 60 days. This provision shall not apply if additional ~~v~~*V*ocational ~~r~~*R*ehabilitation services are required to overcome obstacles to the Member's continued employment.

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

(D) 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~~.

(E) The Member has declined Vocational Rehabilitation services, has become unavailable for Vocational Rehabilitation services or has retired.

(F) The Member has failed, after written warning, to fully participate in ~~an~~ ***Vocational*** ~~a~~***A***ssessment of his or her eligibility for Vocational Rehabilitation services or to provide requested information.

(G) The Member has failed, after written warning, to fully comply with the Member's responsibilities under a Vocational Rehabilitation plan.

(H) The Member has stopped attending training without notifying either the ~~v~~***V***ocational ~~r~~***R***ehabilitation services provider or the Director.

(I) The Member's lack of employment or self-employment for which he or she has the necessary physical capacity, knowledge, or ~~Transferable S~~ ***s***kills and abilities cannot be resolved by Vocational Rehabilitation services.

(J) The Member has misrepresented a matter which was material to the assessment of eligibility or the provision of Vocational Rehabilitation services.

(K) 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 reach~~es~~ the maximum allowance for the authorized plan, whichever comes first. The expense limit may be adjusted annually by the ~~Board~~ ***Director*** in keeping with similar annual adjustments made by the Oregon Department of Consumer and Business Services, Workers Compensation Division, ~~in OAR 436-120~~ ***and published in Bulletin 124.***

5.10.12 – <u>VOCATIONAL REHABILITATION EXPENSES</u>

(A) Reimbursement will be consistent with the fee schedule established by the Oregon Workers' Compensation Division Administrative Rule 436-120-0720 and Bulletin 124.

~~(A)~~***(B)*** 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.

~~(B)~~***(C)*** 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 these ***Administrative*** ~~r~~***R***ules.

5.10.13 – RIGHT TO REQUEST A DIFFERENT VOCATIONAL REHABILITATION SPECIALIST

A Member has the right to request a different Vocational Rehabilitation specialist 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 ***Vocational*** ~~r~~***R***ehabilitation specialist.