

Appeals

Guide to the Administrative Appeals Process



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maine **PERS**
Public Employees
Retirement System

mainepers.org

Guide to the Administrative Decision and Appeals Process

A general overview of
Maine Public Employees Retirement System's
administrative decision and appeals process.

A publication of
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The information in this handbook is intended to give you a general understanding of the Maine Public Employees Retirement System's administrative decision and appeals process. The contents are not the basis of any rights between MainePERS and any party, nor does this handbook provide all of the detail of the laws and rules that govern MainePERS membership and related rights. There are frequent changes to the statutes and rules relating to MainePERS, and the most recent law may not be reflected in this handbook. Before making a decision relating to your rights and benefits, you should review current law and consult with MainePERS staff and your own advisers.

This booklet is designed to assist you in understanding the Maine Public Employees Retirement System (“MainePERS” or “the System”) administrative decision and appeals process. The information is not intended to substitute for legal advice and/or the assistance of an attorney.

You are responsible for any expenses associated with hiring an attorney and any costs associated with witnesses whose attendance you require.

Chapter 702 of MainePERS rules governs the administrative decision and appeals process to the Board of Trustees of the Maine Public Employees Retirement System. You will find the rule online at:

www.maine.gov/sos/cec/rules/90/94/411/411c702.doc

If you do not have access to the Internet, you may request a paper copy by contacting MainePERS by telephone or in writing.

If you have questions about MainePERS administrative decision making and appeals process, please contact:

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P.O. Box 349
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GENERAL INFORMATION

Administrative Decision Process

If MainePERS approves your requested action, you will be notified in writing.

If the System denies your requested action, for example, an application for Disability Retirement benefits, you will receive a “Decision of the Executive Director” from the Executive Director’s Designee. You will be given the right to appeal the adverse decision to the Board of Trustees and instructions on how to bring your appeal. (See the “Appeals Process” section of this publication.)

Although there is no requirement that you be represented or advised by an attorney, the System encourages you to seek the advice of an attorney at any stage of your case. If you are unsure of where to turn for assistance, a list of some organizations that may be able to help is provided at the back of this booklet.

Appeals

Who Can Appeal?

A person whose legal rights, duties, or privileges are adversely affected by a “Decision of the Executive Director” issued by the Executive Director’s Designee can appeal the decision to the Board of Trustees. A person may represent him/herself or be represented by anyone of his or her choice, attorney or lay person.

How Do I Appeal?

To begin the appeal process, you must send a written statement of appeal to the Board of Trustees. Be specific in your letter about the Decision you are appealing. Your letter must also include your name, address, phone number and Social Security number. If your appeal also concerns another MainePERS participant, include his/her name and Social Security number, if you know it.

MainePERS does not accept appeals via e-mail.

Mail the appeal request to the following address, or fax it to the following number:

Board of Trustees
Maine Public Employees Retirement System
P.O. Box 349
Augusta, ME 04332-0349
Fax: 207-512-3282

MainePERS must receive your written notice of the appeal within 30 days from the date your Decision of the Executive Director was received. MainePERS cannot consider your appeal if it is filed after 30 days.

What Are My Responsibilities During An Appeal?

It is your responsibility to participate in conferences and hearings in your appeal. If a scheduling conflict arises, you must notify the Appeals Clerk to request a change of schedule.

When you appeal, MainePERS will send you a packet of information referred to as the "Appeal Packet." This packet contains the information MainePERS considered in making the decision to deny your application or request. It becomes part of the record in your appeal.

If you fail to appear at a hearing, the hearing officer may determine that you have abandoned your appeal. You will then receive written notice regarding your absence. If within ten (10) business days you submit information that demonstrates, in the judgment of the hearing officer, that you had good cause for failure to appear, the appeal will be reinstated. If you do not respond within ten (10) days, the "Decision of the Executive Director" will become final on the 11th day.

Who Is Involved?

Appeals Clerk. The MainePERS employee who acts as a point of contact between the hearing officer and the parties to an appeal.

Appellant. You as the person bringing the appeal and/or your representative.

Board of Trustees. An eight-member group who makes the final agency decision on all appeals.

Board Counsel. The attorney general or an assistant attorney general available to advise the hearing officer and the Board of Trustees on matters of law during the appeal.

Executive Director of MainePERS. The person responsible for the administration of the System, including the approval of all benefit payments.

Executive Director's Designee. A member of MainePERS staff assigned to make certain decisions on behalf of the Executive Director.

Hearing Officer. An independent contractor (not an employee of the System) hired to conduct appeal proceedings. The hearing officer is a person with appropriate experience and/or training, whom the Board judges to be fair, impartial, unbiased, and able to conduct a fair, efficient and effective appeal process. When MainePERS receives a statement of appeal in a timely manner, the System assigns the case to a hearing officer.

Medical Board. In Disability Appeals, a panel of three physicians available for consultation with the Executive Director's Designee, the staff of the System, the Board of Trustees and/or the hearing officer regarding an appellant's medical situation.

MainePERS Representative. An employee of MainePERS who represents and advocates for the System in an appeal.

System Advisor. The System employee who is knowledgeable in System policies, practices and procedures, and who is available as an informational resource to assist the hearing officer, the Board and Board counsel. If the hearing officer seeks substantive information from the System Advisor, such request shall be in writing and both the request and the response, shall be copied to the parties and placed of record.

The *Ex Parte* Communication Rule

Because the hearing officer must listen impartially to the evidence presented in your appeal, the hearing officer can only consider facts and arguments when all sides have the opportunity to be present. The hearing officer may not speak with one party about the case unless all parties are present. If you write to the hearing officer, you must also, at the same time, send a copy of your correspondence to the persons representing the other parties, for example, the MainePERS Representative.

Evidence

The hearing officer is responsible for issuing a fair and impartial recommended final decision to the Board of Trustees. The hearing officer reviews the basis for the appeal and all the relevant evidence considered by the Executive Director's Designee in making the Decision. The hearing officer may allow the introduction of additional evidence during the appeal process.

“Relevant evidence” is information which tends to prove or disprove an issue in the case and is the kind of information on which reasonable persons would rely, for example, medical records. The hearing officer also determines the weight to be given the evidence. The hearing officer may exclude information which is irrelevant or repetitious.

When all parties stipulate, or agree, to a fact, the hearing officer may make a finding of fact on the basis of the stipulation. Signed statements or on-the-record oral statements by parties are sufficient as stipulations, if agreed to by both parties.

Documents contained in the appeal record (including medical records) are by law public records and are generally not confidential under Maine law.

STEPS IN THE APPEAL PROCESS

1. Pre-Hearing Conference

The first step in the appeal process is the Pre-Hearing Conference. This is usually a telephone conference among you, your attorney or representative (if you have one), the MainePERS Representative, and the hearing officer. The Pre-Hearing Conference is not the time to introduce evidence or argue the merits of your appeal. During the conference, the hearing officer will list the issues for appeal and set a schedule for the filing of documents and exhibits and other events that will take place during the course of your appeal.

2. Expedited or Unrestricted Appeal

During the Pre-Hearing Conference, you will be asked to elect whether to proceed by an Expedited Appeal or an Unrestricted Appeal. If you elect an Expedited Appeal, the evidence is limited to your testimony, the testimony of any other non-expert witnesses, and the documentary evidence already considered by the Executive Director. If you elect an Expedited Appeal, it is anticipated that a decision will be issued in your appeal within approximately 90 days. If you elect an Unrestricted Appeal, you may introduce additional documentary evidence and the testimony of expert and non-expert witnesses, and your appeal will likely take substantially longer than 90 days. Your election of an Expedited Appeal or an Unrestricted Appeal becomes irrevocable ten days after the Pre-hearing Conference.

3. Notice to Other Parties

If an appeal involves a Participating Local District (PLD) employee, the System will notify the PLD of the appeal and of the fact that the PLD can elect to be a party to the appeal, in addition to MainePERS and the Appellant. MainePERS will also provide notice to parties whose legal rights, duties or privileges may adversely be affected by a Decision of the Executive Director's Designee.

4. Hearing

The hearing officer will schedule a hearing to take testimony from you and other lay witnesses and, if you elect an Unrestricted Appeal, any expert witnesses you or the System choose to have testify. All hearings are under oath and recorded by a court reporter, who prepares a record of the hearing.

5. Reconsideration by the Executive Director's Designee

After the hearing, and prior to a decision by the hearing officer, the case goes back to the Executive Director's Designee for reconsideration. The Designee can decide to consult with the Medical Board again before issuing the reconsidered decision. The Designee may affirm the earlier decision, or reverse some or all of the earlier decision.

6. Final Recommended Decision of the Hearing Officer

Following the hearing and the Executive Director's Designee's reconsidered decision, the hearing officer issues a recommended decision. All the parties have an opportunity to read and comment on the hearing officer's decision. The hearing officer will consider and address the parties' comments and transmit a recommended final decision to the Board of Trustees, which might include revisions made as a result of the parties' comments.

If a party believes that the hearing officer's recommended final decision contains errors that the Board of Trustees has authority to address, the party must notify the Board and Board Counsel in writing within 10 days after receipt of the recommended final decision. This notification must identify the errors the party is claiming with specific references to the record. By law, the Board is only authorized to address three types of errors: (1) the recommended final decision is not supported by the record as a whole; (2) Board Counsel advises the Board that the hearing officer has made an error of law; or (3) the recommended final decision exceeds the hearing officer's authority or jurisdiction.

7. Decision by the Board of Trustees

In the event that no party notifies the Board of Trustees and Board Counsel that the hearing officer's recommended final decision contains legal or factual errors, the Board generally will accept the recommended final decision and will not schedule consideration of the appeal or permit the parties to present oral argument at the Board's monthly meeting.

If a party notifies the Board and Board Counsel of an error in the hearing officer's recommended final decision, Board Counsel will notify the parties whether the Board will be advised that such an error exists. If so, the Board will consider the recommended final decision at a subsequent monthly meeting. The Board will notify the parties of the date and time of the meeting, at which time the parties may present an oral or written statement of position to the Board.

The Board may receive consultation and information at any time during the meeting from Board Counsel or the System Advisor. As stated above, the Board must accept the final recommended decision of the hearing officer unless it is not supported by the record as a whole, the retirement system is advised by Board Counsel that the hearing officer has made an error of law or the decision exceeds the authority or jurisdiction conferred upon the hearing officer.

FURTHER PROCEEDINGS

1. Appeal to Superior Court

If you disagree with the Board's Decision, you can appeal to Superior Court within 30 days of the receipt of the Board's Decision.

2. Appeal to Law Court

If unsuccessful at Superior Court, the final step is an appeal to the Maine Supreme Judicial Court in the time frame and manner prescribed by law.

SOURCES FOR ADVICE AND/OR REPRESENTATION

Note: You are not required to have representation in an appeal. This list is provided to help you find representation if you want it.

AFSCME, Council 93

20 Winter Street

Augusta, ME 04330

Tel: (207) 622-6191

Web: www.afscmecouncil93.org/maine.html

Cumberland Legal Aid Clinic

University of Maine Law School

246 Deering Avenue

Portland, ME 04102

Tel: (207) 780-4370; Toll Free: 1-877-780-2522

Web: mainelaw.maine.edu/cumberlandlegal.aspx

Legal Services for the Elderly, Inc.

9 Green St., P.O. Box 2723

Augusta, ME 04338-2723

Tel: (207) 621-0087; Toll Free: 1-800-750-5353

Web: www.mainelse.org

Maine Education Association

35 Community Drive

Augusta, ME 04330

Tel: (207) 622-5866; Toll Free: 1-800-452-8709

Web: www.maine.nea.org

Maine School Management Association

49 Community Drive

P.O. Box 710

Augusta, ME 04332-0710

Tel: (207) 622-3473

Web: www.msmaweb.com

Maine State Bar Association

Lawyer Referral Service
124 State Street, P.O. Box 788
Augusta, ME 04338-0788
Tel: (207) 622-7523
Web: www.mainebar.org
E-mail: info@mainebar.org

Maine State Employees Association

65 State Street, P.O. Box 1072
Augusta, ME 04332-1072
Tel: (207) 622-3151; Toll Free: 1-800-452-8794
Web: www.mseaseiu.org

Volunteer Lawyers Project

88 Federal Street, P.O. Box 547
Portland, ME 04112
Tel: (207) 774-4348; Toll Free: 1-800-442-4293
Web: www.vlp.org
E-mail: contact@vlp.org

Advice/representation can also be obtained through private attorneys. Some of the organizations listed above may have some income guidelines or limits for their services.



A publication of
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CONTACT US!



MainePERS
P.O. Box 349
Augusta, ME 04332-0349

Main Line: (207) 512-3100
Toll-free: (800) 451-9800
Fax: (207) 512-3282

Office Hours

Monday through Friday from 8:00 a.m. to 5:00 p.m.,
with the exception of recognized holidays.