

## FACT SHEET

## PERA Appeal Process

Minnesota Statutes governing the administration of PERA (and the other statewide retirement systems) include a section allowing employees, retirees, employers, and others the right to appeal administrative determinations that have been made by PERA's Executive Director, and with which the person does not agree. This fact sheet describes the PERA Board of Trustees ("Board") appeal process.

### Review Rights of Individuals

M.S. § 356.96<sup>1</sup> gives the following individuals the right of appeal<sup>1</sup>:

- Active members
- Inactive members (vested and non-vested)
- Retired members
- Persons who have applied to be participants
- A beneficiary or survivor of a member
- A governmental unit that employs active participants

The law broadly defines what can be appealed as a determination made by the administration of a covered pension plan regarding a person's eligibility, benefits, or other rights under the plan with which the person does not agree.

### Content of a Notice of Determination

Under the law, PERA staff members must fulfill certain documentation standards if they deny a member's application or written request, modify a benefit, or terminate the benefit of a person claiming a right or potential right under the plan. PERA staff is required to send the person a written notice containing:

1. the reasons for the determination;
2. a notice of the person's right to appeal to the Board to review the decision within 60 days of receiving the written determination notice;
3. a statement indicating that a failure to petition for a review within the 60-day time frame precludes the person from contesting in any other administrative review or court procedure; **and**
4. a statement advising the person that all relevant facts and documents that are to be reviewed by the Board must be filed at least 15 days prior to the hearing date.
5. A summary of the appeal statute, Minn. Stat. § 356.96.

<sup>1</sup>Another section of law gives individuals the right to appeal a decision to deny an application for disability benefits, or the continuation of disability benefits.

If PERA terminates a benefit that is being paid to a person, PERA must provide written notice of the termination via certified mail. The notice must include the reason for the termination and provide the person an opportunity to explain in writing, in person, by telephone, or by e mail, the reasons the benefit should not be terminated.

### **Petition for Review**

The petition for review must be postmarked no later than 60 days after the person receives the Notice of Determination. The petition for review must include the reasons that the person believes the determination should be reversed or modified. The petition for review may include all documentation and written materials that the petitioner deems to be relevant.

### **Hearing Process**

When a person files a petition for review, PERA staff sets the date of the appeal hearing before the Board and informs the individual. Written submissions and exhibits to the Board are due 15 days before the Board

hearing. The petitioner may, for good cause, request a delay of the Board hearing. Legal counsel or others may represent the appellant at the Board hearing.

The Executive Director may direct that the petitioner participate in a fact-finding session conducted by an administrative law judge (ALJ) assigned by the Office of Administrative Hearings to develop the record for the Board. The ALJ will make a Recommendation to the Board based on findings of fact and conclusions of law. The Recommendation and the evidence submitted by the parties will be provided to the Board, along with a staff memorandum. The Board will make the final decision. The Board also has the authority to order a contested case hearing.

When there is no fact-finding conference or contested case hearing, once the written submissions and exhibits have been filed with PERA, staff compiles all of the materials, including copies of relevant laws or correspondence, and prepares a written summary of the key facts and events along with a recommended decision. The staff memorandum and exhibits are mailed to each party and to the Board Trustees at least 7 days before the scheduled hearing date.

When the appeal comes before the Board, the parties have an opportunity to make a brief statement concerning any facts or arguments they wish to present. In addition to these oral statements, the Board may ask the participants to respond to their questions. The Board President has final authority to set the amount of time any party may have to present information.

In most cases, the Board renders a decision at the meeting; however, they do have the option to postpone their decision until they receive additional requested information. The appellant is advised in writing of the Board's decision, which can be appealed to the Court of Appeals.