

PROCEDURE FOR IMPLEMENTATION OF THE COMMISSION'S POLICY
REGARDING MODIFICATION OF RETIREMENT ALLOWANCES OF
DISABILITY RETIREES

As a part of the review of the annual statement of earnings, the PERAC Fraud Prevention Manager will identify all disability retirees whose earnings have resulted in the return of the entire retirement allowance. The Fraud Prevention Manager will review filings for the previous two consecutive years and the filing year and identify those retirees whose earnings have resulted in the return of the entire retirement allowance in each of the two previous consecutive years and the year of review.

The Fraud Prevention Manager will contact the former employer and verify the amount of regular compensation that would have been paid to the retiree during the preceding year had he or she continued in service in the grade held at the time retired.

The Fraud Prevention Manager will consult with the Actuary to verify the current value of the \$5,000 referred to in 840 CMR 10.16(4) to be used in calculating the modification of a disability retiree's allowance.

The Fraud Prevention Manager will perform the calculation and direct the findings to the Executive Director. The Executive Director will advise the retiree that:

- his or her allowance is subject to modification pursuant to G.L. c. 32, § 8(3);
- he or she can choose to challenge the modification by submitting written information to the Commission for review and evaluation;
- he or she may request a hearing in addition to providing written information;
- the retiree has an opportunity to be heard by the Commission or its designee to establish that his or her allowance should not be modified;
- if the retiree requests an opportunity to be heard by the Commission or its designee, the request must be made in writing within 30 days of the receipt of the notification. The proceeding will be conducted within 30 days of the request, and a final determination rendered at the next regularly scheduled Commission meeting following the proceeding;
- the modification will remain in effect until the retiree has established that he or she no longer has potential earnings;
- the retiree has the responsibility for establishing that he or she no longer has potential earnings;
- the retiree shall be allowed to maintain his or her health insurance coverage;
- the retiree will continue to be considered to be a disability retiree for purposes of G.L. c. 32A, § 10 and G.L. c. 41, § 100B; and

- a decision to modify the retirement allowance can be appealed to the Contributory Retirement Appeal Board, the appeal must be filed within 15 days of the Commission's final determination, and the address for the appeal will be included in the decision to modify.

The retiree and the appropriate Retirement Board will be provided with a copy of the modification determination and directed to terminate the retiree's allowance until further notice. The Board will also be advised that the retiree can continue to receive health insurance coverage and that the premium can be paid from the allowance that the member would have received had not the modification taken place.

HEARING WITH RESPECT TO MODIFICATION OF A RETIREMENT ALLOWANCE PURSUANT TO G.L. c. 32, § 8(3)

If a retiree submits written information in response to the notification of modification, the Chairman will assign a designee (either a Commissioner, a Commission staff member or both) to evaluate the submission.

If a retiree requests an opportunity to be heard on the modification the Chairman shall schedule a hearing and may conduct the proceeding himself or designate a Commissioner or Commission staff member to conduct the proceeding.

The Chairman or his designee will review the written submission and any information provided at a hearing, if one is requested, and will make a recommendation to the Commission at its next meeting.

Any proceeding regarding modification will be conducted at the Public Employee Retirement Administration Commission offices. The Commission will not be responsible for any costs to the retiree as a result of the proceeding.

The retiree shall be allowed to present facts and circumstances that establish that his or her allowance should not be modified.

The proceeding shall be as informal as possible with the intent being to provide the retiree with an opportunity to establish that his or her allowance should not be modified.

The final determination of the Commission will be provided to the retiree within 15 days. A notice of the right to appeal the determination to the Contributory Retirement Appeal Board shall accompany the determination.

G.L. c. 32, § 8(3)

Modifications of retirement allowance. If as a result of such medical report by a regional medical panel, as a result of the submission of earnings information under section ninety-one A, or as the result of the completion of a rehabilitation program as provided for under subdivision (1), or under subdivision (5) of section twenty-one, the commission finds that such retired member is engaged or is able to engage in gainful occupation and that the annual rate of his actual or potential earnings is less than his regular compensation as defined in this subdivision, but is more than the difference between such regular compensation plus the sum of five thousand dollars, and the normal yearly amount of his retirement allowance, then the yearly amount of his pension shall be reduced, and if his actual or potential earnings are more than such regular compensation, his pension shall be suspended. Notwithstanding any other provisions of this section, if such member submits earnings information pursuant to section ninety-one A, indicating earnings in excess of regular compensation, as therein described, such member's pension shall be reduced as provided for in this subdivision and shall not be increased for a period of one year unless such medical report finds that the mental or physical condition of such member has deteriorated. If the annual rate of his earnings should later be changed, the yearly amount of his pension shall be further modified by reinstating, increasing, reducing, or suspending it, as the case may be. For purposes of this subdivision, regular compensation means, subject to further definition by regulations of the public employee retirement administration commission, regular compensation which would have been payable during the preceding year had the member continued in service in the grade held by him at the time he was retired. The public employee retirement administration commission shall, subject to the provisions of section fifty of chapter seven, promulgate regulations establishing, and providing a system for annually adjusting for inflation and such other equitable factors as the commission deems relevant, the fair amount of outside income that may be earned by a member retired pursuant to section six or seven, and shall promulgate regulations for the determination of the potential earnings of any such retired member based upon such member's functional capacity, age, education, and experience. Any such modification may be appealed by the member to the contributory retirement appeals board.

840 CMR 10.16: Modification of Retirement Allowance and Fair Amount of Outside Earnings and Potential Earnings Pursuant to M.G.L. c. 32, § 8(3)

(1) For purposes of 840 CMR 10.16, "regular compensation" means, regular compensation which would have been payable during the preceding year had the member continued in service in the grade held by him at the time he was retired.

(2) For purposes of 840 CMR 10.00, "potential earnings" shall mean:

- (a) For a disability retiree who has been found able to return to his position, the amount that would have been received had he or she been reinstated to active service.
- (b) For a disability retiree who has completed a rehabilitation program, an amount that the member can potentially earn will be determined as a part of the rehabilitation program, after consideration of a disability retiree's functional capacity, age, education, and experience.

(3) The Commission shall review all medical panel reports filed with respect to disability retirees, all earnings information submitted under M.G.L. c. 32, § 91A, and all reports submitted as the result of the completion of a rehabilitation program.

(4) If the Commission finds that:

(a) a retired member is engaged or is able to engage in gainful occupation, and
(b) that the annual rate of his actual or potential earnings is less than his regular compensation as defined in this subdivision, but is more than the difference between such regular compensation plus the sum of \$5,000, and the normal yearly amount of his retirement allowance, the yearly amount of his pension shall be reduced, and if his actual or potential earnings are more than such regular compensation, his pension shall be suspended.

(5) If the Commission finds that a member has submitted earnings information pursuant to M.G.L. c. 32, § 91A indicating earnings in excess of regular compensation as defined by this regulation, the member's pension shall be reduced or suspended and shall not be reinstated or increased for a period of one year unless a report of a medical panel finds that the mental or physical condition of such member has deteriorated. If the annual rate of his earnings should later be changed, the yearly amount of his pension shall be further modified by reinstating, increasing, reducing, or suspending it, as the case may be.

(6) For purposes of 840 CMR 10.00 and M.G.L. c. 32, § 8(3) the fair amount that a member retired for disability pursuant to M.G.L. c. 32, § 6 or 7 may earn or may potentially earn shall be annually adjusted for inflation. To accomplish this, the Commission will determine the increase in the consumer price index in the same manner as determined for purposes of M.G.L. c. 32, § 102 and shall increase by that amount the \$5,000 referred to in 840 CMR 10.16(4) be used in calculating the modification of a disability retiree's allowance pursuant to M.G.L. c. 32, § 8(3). Each year the Commission will issue an advisory to the retirement boards that will identify the increase for the following year and describe the method used to arrive at the increase. Any increases applied to the \$5,000 shall be permanent and any future increases will be applied to the permanent amount from the prior year.