

840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

840 CMR 10.00: STANDARD RULES FOR DISABILITY RETIREMENT

10.14: Annual Statement of Earnings; Definition of Earnings From Earned Income; Refunds and Modifications Based on Earnings Information

(1) The retirement board shall provide such information as the Commission shall require to assist it in performing its responsibilities pursuant to M.G.L. c. 32, §§ 91A and 91B.

(2) Upon receipt of notice from the Commission that a disability retiree has failed to file the Annual Statement of Earnings required by M.G.L. 32, § 91A, the retirement board shall review all information received and shall ~~suspend-terminate~~ the member's rights in and to the disability retirement allowance until the member has complied with the reporting requirements under M.G.L. 32, § 91A. Prior to any ~~suspension-termination~~ of benefits, the member shall be given a written notice and an opportunity to be heard by the retirement board and, upon such termination or reduction of benefits, shall have the right to appeal such action to the Contributory Retirement Appeal Board.

(3) ~~Upon~~ At the board meeting immediately following the receipt of notice from the Commission that a disability retiree has had earnings in excess of the amount allowed by M.G.L. 32, § 91A, the board shall request the member to refund the retirement allowance for that year or a portion thereof equal to such excess, as the case may be. Initial notice of a request for refund shall include the calculation on which the request is based and shall state that the member may, within 15 days, file a written request for a hearing to show cause why the disability retirement allowances should not be suspended or terminated or why no refund is due. A copy of such initial notice shall also be sent to the Commission. If a retiree files a request for hearing, such hearing shall be held within ~~30-45~~ days of such request for hearing and shall be conducted pursuant to the provisions of 840 CMR 10.12. The board shall notify the member of its decision, including a final request for refund, if any, within 30 days of the hearing. If the member is to be required to refund an amount to the board, the notice of the board's decision shall include notification that the member's allowance shall be withheld until the refund is made. The member shall also be notified that if the refund is not made, payment of the retirement allowance shall be resumed only when the amounts withheld are sufficient to pay the amount of the refund. A copy of M.G.L. c. 32, § 16(4) shall be included with the notice of decision and, upon request, the retirement board shall advise and assist the applicant or retired member, as the case may be, in the filing of an appeal. A copy of this notification shall also be sent to the Commission.

(4) The term "earnings from earned income" as used in G.L. c. 32, § 91A shall mean income that implies some labor, management or supervision in the production thereof, not income derived from ownership of property. For purposes of G.L. c. 32, § 91A, if an individual operates a business for profit, individually or through an agent, that individual does not have the option of classifying such income as dividends as opposed to wages. Profits derived from the operation of a business through some labor, management or supervision of such profits are earned income, regardless of how a retiree categorized such income for income tax or other purposes.