

## MEMORANDUM #29, 2008

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission  
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## M E M O R A N D U M

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Changes to 840 CMR 10.12, 10.14, Hearing by Retirement Board concerning  
M.G.L. c. 32, §§ 91, 91A or 91B

DATE: August 25, 2008

On June 27, 2008, the Secretary of State published the Public Employee Retirement Administration Commission's ("Commission") changes to 840 CMR 10.12 and 840 CMR 10.14 providing guidelines to retirement boards ("Board") regarding conducting hearings for retirees under M.G.L. c. 32, §§ 91, 91A or 91B. The hearing can be held for excess earnings and/or failure to file the annual statement of earned income. A copy of the regulations with the changed emphasized is enclosed. This Memorandum is intended to highlight important changes.

840 CMR 10.12(1) Notice.

- The Board is required to give the parties 30 days notice of the hearing to provide the retiree, the parties and the Board time to properly prepare for the hearing. In addition, the 30 days will give the parties and the Board ample time to communicate with the Commission to ensure all parties have a clear understanding of how the Commission arrived at its calculations prior to the hearing.
- In the case of a delayed statement or where a subsequent amendment of the issues is necessary, sufficient time should be allowed for all parties prior to the hearing to obtain all the information needed in order for the Board to conduct the hearing.
- The Commission shall participate in any hearing at its discretion. The Board has the right to request the Commission's presence to participate in a hearing. When a Board requests that a Commission's representative be present at a hearing such representative will make every effort to attend such hearing and participate. Additionally, the Commission has the right to attend any Board hearing where the Commission determines its participation is necessary.
- In any M.G.L. c. 32, §§ 91, 91A or 91B case, the Commission will present all of its information to the Board, including testimony and documentation, and respond to questions from the Board or Hearing Officer. The Commission will make every effort to ensure the Board is prepared to conduct a hearing by properly informing the Board about the issues of termination and excess earnings calculations.
- The Commission will not cross examine the retiree during the proceeding. The Board hearing is meant to be an amicable process by which excess earnings and termination issues are discussed, explored and potentially resolved.

840 CMR 10.14(3) Annual Statement of Earnings; Definition of Earnings from Earned Income; Refunds and Modifications Based on Earnings Information

- When the Board receives notice from the Commission that a retiree had excess earnings the Board will inform the retiree and provide the retiree 15 days to file a request for a hearing to show cause why the disability retirement allowance should not be suspended or terminated or why no refund is due. If the Board receives no response from the retiree, the Board must suspend or terminate the allowance. Please note that the retiree only has the right to request a hearing. Failing to exercise that right gives the Board the authority to suspend or terminate the retiree's pension without holding a hearing.
- Upon receipt of the retiree's request for a hearing, the Board shall schedule the hearing within 45 days, but provide the member at least 30 days notice of such hearing. If the hearing cannot be held in the 45-day time period, the Board should communicate with all parties to determine a date that is amenable to them.
- Notice and any correspondence regarding any Board hearing must be sent to all parties including the Commission.
- The hearing must be conducted pursuant to the provisions of 840 CMR 10.12. The Commission will assist the Board in this endeavor if needed.
- Within 30 days following the hearing, the board must notify the member of its decision. However, if the Board must gather further information to make its determination after the hearing has concluded, it should leave the record open for the parties to submit the additional information to the Board. When such information is received, the Board must release its decision within 30 days of receiving such information.

Attachments

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