City of Portland, Oregon

BUREAU OF FIRE AND POLICE DISABILITY AND RETIREMENT

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Statement of Rulemaking Need and Fiscal Impact

Purpose of Administrative Rule Amendment Recommendations – Staff proposes FPDR Administrative Rule amendments when it is deemed essential to providing clarity, consistency of application of Chapter 5 provisions, and full disclosure to all stakeholders.

Summary of Amendments:

FPDR Staff recommends amending Section 5.7, Service-connected or Occupational Disability Benefits for FPDR Two and Three, as follows:

Issues:

#1 Amends Section 5.7.01 – "Definitions"

- Adds Doctor of Podiatry to definition of Attending Physician.
- Deletes language that has been relocated to Section 5.7.09 "Recipient of Disability Benefits."
- Redefines Date of Disability to be consistent with definition in other sections of the Administrative Rules.
- Adds the term Documented Absence to clarify the type of scheduled time away required to request payment of a disability benefit.
- Adds the term Pended to define the period of time following FPDR's receipt of a complete application for benefits and the approval or denial of the application.
- Adds the term Required Duties to define the type of work a Member must be incapable of performing in order to be eligible for disability benefits.
- Redefines the term Worsening.
- Makes housekeeping changes

#2 Amends Section 5.7.02 – "Disability Benefits Generally"

- Establishes timelines for submitting Work Status Reports and claims for reimbursement of lost wages or leave restoration.
- Deletes language that has been relocated to Section 5.7.09 "Recipient of Disability Benefits."
- Makes housekeeping changes.

#3 Amends Section 5.7.03 – "Application for Benefits"

- Amends timelines for making application for disability benefits to include applications for reimbursement of lost wages or leave restoration.
- Deletes language that is addressed in another section of the rules.

- Adds language concerning Member's required cooperation with the investigation of his/her claim for benefits, and the consequence of failing to do so.
- Makes housekeeping changes.

#4 Amends Section 5.7.04 – "Claim Approval or Denial"

- Added language concerning when a Member is not eligible for service-connected disability benefits.
- Makes housekeeping changes.

#5 Amends Section 5.7.05 – "Amount of Benefits"

- Makes housekeeping changes.
- Adds language to paragraph covering incarcerated Member and FPDR's right to recover overpaid amounts.

#6 Amends Section 5.7.06 – "Form of Benefits"

- Makes housekeeping changes.
- Clarifies when a Member is eligible for a disability benefit payment.

#7 Amends Section 5.7.07 – "Transitional Duty Program"

- Adds the term "or designee" as it is the Bureau Chiefs' designee who most often is involved in this process.
- Makes housekeeping changes.

#8 Amends Section 5.7.09 – "Recipient of Disability Benefits"

- Adds language previously noted in other sections of this rule concerning Members on disability and the requirement of periodic examination.
- Makes housekeeping changes.

#9 Amends Section 5.7.10 – "Independent Medical Examinations"

- Corrects language to ensure a consistent process and rule application in all sections of the Administrative Rules.
- Makes housekeeping changes.

#10 Amends Section 5.7.11 – "Suspension, Reduction or Termination of Benefits"

- Deletes the first paragraph as statement is made in other sections of the administrative rules.
- Adds Member's noncooperation in vocational rehabilitation as one of the reasons that may cause the Director to suspend, reduce or terminate disability benefits.
- Makes housekeeping changes.

#11 Amends Section 5.7.12 – "Offset to Service-connected and Occupational Disability Benefits Payable"

- Adds language to further clarify the procedure of wage offset.
- Adds language to document historical practice of allowing the Director to offer to the Member the option of having their disability benefit reduced to the 25% minimum in lieu of submitting wage information for the purpose of wage offset.
- Adds language to procedure for Members who are self-employed.
- Makes housekeeping changes.

#12 Amends Section 5.7.13 – "PERS Offset"

- Makes housekeeping changes.

#13 Amends Section 5.7.14 – “Recovery of Overpayments”

- Makes housekeeping changes.

#14 Amends Section 5.7.15 – “Disability Retirement Age”

- Makes housekeeping changes.

NOTE: Housekeeping changes consist primarily of typographical and grammatical corrections.

Desired Outcome:

Board adopts amendments as recommended by staff.

Fiscal Impact Statement

FPDR finance staff has reviewed the proposed rules changes for fiscal impact:

No impact anticipated.

City of Portland, Oregon

FIRE AND POLICE DISABILITY, RETIREMENT

AND DEATH BENEFIT PLAN

Administrative Rules

FPDR TWO AND THREE BENEFITS

SECTION 5.7 – SERVICE-CONNECTED OR OCCUPATIONAL DISABILITY BENEFITS

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Adopted November 12, 1991
Effective February 1, 1992

As Amended by:
Resolution No. 287 on August 8, 1995, Resolution No. 288 on September 12, 1995, Resolution No. 298 on October 14, 1997, Resolution No. 320 on December 14, 1999, Resolution No. 323 on April 11, 2000, Resolution No.332 on April 17, 2001, Resolution No. 335 on August 14, 2001, Resolution No. 338 on December 11, 2001, Resolution No. 340 on January 15, 2002, Resolution No. 345 on April 9, 2002, Resolution No. 349 on August 13, 2002, Resolution No. 350 on August 13, 2002, Resolution No. 351 on September 10, 2002, Resolution No. 352 on October 8, 2002, Resolution No. 365 on August 12, 2003, Resolution No. 372 on February 10, 2004, Resolution No. 381 on August 10, 2004, Resolution Nos. 388, 389 and 390 on June 14, 2005, Resolution No. 392 on November 8, 2005, Resolution No. 393 on December 13, 2005, Resolution No. 405 on May 9, 2006, Resolution No. 419 on March 13, 2007; Resolution 423 on November 27, 2007; Resolution No. 431 March 23, 2009; Resolution No. 445 on October 27, 2009; and Resolution No. 472 on November 27, 2012.

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5.7.01 – DEFINITIONS

"Aggravation." The term "Aggravation" means a Worsening of an approved service-connected injury/illness or occupational disability that occurs after the Member's condition has been deemed Medically Stationary.

"Attending Physician." The term "Attending Physician" means:

(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the ~~Board of Medical Examiners for the State of Oregon~~ ***Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry*** or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or

(B) For a period of 30 days from the first visit on the initial Claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States. ~~All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member's identified physician or a physician appointed by the Director, unless otherwise determined by the Director.~~

"Base Pay." The term "Base Pay" means the ~~b~~***B***ase ~~p~~***P***ay of the FPDR Two or FPDR Three Member's position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation**,** sick or other leave. When a Member is paid overtime for part of his or her regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member's regular work schedule shall be included in Base Pay.

"Base Pay in Effect at Disability." The term "Base Pay in Effect at Disability" means the Member's base pay amount at the time the disability payment is due.

"Bi-weekly Disability Benefits." The term "Bi-weekly" Disability Benefits" means disability benefits payable on the same schedule as the Member's regular payroll on approved service-connected and occupational disability Claims during a ~~m~~***M***ember's first year of receiving disability benefits.

"Claim." The term "Claim" means a written request to FPDR for a retirement, disability or death benefit and may be filed by an active ~~m~~***M***ember, his/her representative or legal beneficiary, or surviving spouse or other legal representative of a deceased Member. This term may be used synonymously with the term "application."

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"Date of Disability." The term "Date of Disability" means the date that the Member***'s Attending Physician establishes that the Member*** is first unable to perform the Member's ~~r~~***R***equired ~~d~~***D***uties as a result of ***a service-connected*** injury***/***illness ***or occupational disability*** that has been determined to arise out of and in the course of the Member's employment in the Bureau of Police or Fire.

"Director." The term "Director" where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or his or her designee.

"Documented Absence." The term "Documented Absence" means documentation of the time missed from a scheduled work shift submitted to the Director demonstrating that the Member was not paid by the Bureau of Fire or Police for that time.

"Interim Disability Benefits". : The term "Interim Disability Benefits" means an amount that may be payable to a Member for lost time from work prior to the compensability determination or withdrawal of his/her application for service-connected ***injury/illness*** or occupational disability benefits.

"Medically Stationary." The term "Medically Stationary" means that no further material improvement can reasonably be expected from medical treatment or the passage of time.

"Monthly Disability Benefits." The term "Monthly Disability Benefits" means benefits payable once per month on approved service-connected and occupational disability claims after a ~~m~~***M***ember's first year of receiving disability benefits.

"Original Injury." The term "Original Injury" means the period from the first occasion of medical treatment or disability resulting from a service-connected ***injury/illness*** or occupational disability through the date the member first reaches a medically stationary status.

"Pended." The term "Pended" means the 60-90 day period following FPDR's receipt of a complete application for benefits on an original Claim or for a Recurrence Claim during which FPDR is evaluating the Claim to determine if the injury or illness arose out of and in the course of the Member's employment with the Bureau of Fire or Police.

"Preponderance of the Evidence." The term "Preponderance of the Evidence" means the greater weight of the evidence.

"Primary Physician." See "Attending Physician."

"Proximate Cause." The term "Proximate Cause" means a cause that directly produces an event and without which the event would not have occurred.

"Recurrence." An Aggravation of a service-connected injury/illness or occupational disability that requires Claim re-opening for additional disability benefits and/or medical benefits.

"Required Duties." The term "Required Duties" means the essential work functions that are assigned to the Member by the Bureau of Police or Fire.

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"Significant Factor." The term a "Significant Factor" means an important, proximate cause.

"Specialty Physician." The term "Specialty Physician" means a licensed physician who qualifies as an Attending Physician who provides evaluation, diagnosis or temporary specialized treatment at the request of the Member's "Attending Physician" on an approved Claim.

"Substantial Gainful Activity." The term "Substantial Gainful Activity" means the Member is qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member's rate of Base Pay at disability.

"Suspension of Benefits." The term "Suspension of Benefits" means ***the payment of*** disability benefits are stopped by the Director ***until*** ~~for the period of suspension when~~ the Member ~~has failed to comply~~ ***complies*** with the provisions of Chapter 5 of the City Charter, ~~or with a particular~~ ***and the*** FPDR Administrative Rule***s*** ~~provision~~.

"Worsening." The term "Worsening" means objective findings indicating a ~~worsening of~~ ***deterioration due to*** the approved service-connected injury/illness or occupational disability based on expert medical opinion or an expert medical opinion explaining why the Member's symptoms indicate a ~~worsening~~ ***decline*** ~~of~~ ***in*** the approved service-connected injury/illness or occupational disability.

"Years of Service." The term "Years of Service" of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.

5.7.02 – <u>DISABILITY BENEFITS GENERALLY</u>

(A) Eligible Members with pended service-connected ***injury/illness*** or occupational disability Claims received by the Fund Administrator after January 1, 2013 may be eligible to receive Interim Disability Benefits beginning with the payroll period the Fund Administrator receives the complete application for benefits including the Attending Physician Report form and a written statement from the physician that the Member is unable to perform ~~his or her~~ ***the Member's*** ~~r~~***R***equired ~~d~~***D***uties because of an injury or illness arising out of and in the course of his or her employment in the Bureau of Fire or Police. If the Member's claim is withdrawn by the Member or denied by the Director and the denial becomes final, the amount of Interim Disability Benefits paid to the Member is considered an overpayment.

(B) Payment of Disability Benefits - Disability benefits will be paid to a Member only during such time as the Member is unable to perform ~~his or her~~ ***the Member's*** ~~r~~***R***equired ~~d~~***D***uties in the Bureau of Fire and Rescue or Bureau of Police. Thus, the disability benefits being paid to a Member shall cease when the Member is capable of performing the duties required of him or her.

A Member who is unable to perform his or her usual job, but is able to do other work to which the Member may be assigned in his or her respective Bureau, is ineligible for disability benefits if such a job is available to the Member. For example, a police officer whose injury prevents him or her from performing police duties in the field will be ineligible for disability benefits if the officer is capable of performing more

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sedentary duties and such sedentary position is available to the officer.

(C) Members with approved service-connected injury/illness or occupational disability Claims may be eligible to receive disability benefits upon the Director's receipt of a current Work Status Report. Work Status Reports must be submitted to the Director no later than 30 days of the date of the last report that authorized disability.

(D) Claims for reimbursement of lost wages or restoration of leave accrual for documented medical appointments must be submitted to the Director no later than 30 days after the Member's Documented Absence.

~~(C)~~***(E)*** Changes in Employment Status While on Disability

(1) If Member is demoted during the time that he/she is receiving disability benefits, his/her disability benefit will be based on the base pay of the position held at the time the Member first became disabled on the ***current occurrence of the*** Claim.

(2) If Member is demoted and is not receiving disability benefits at the time of demotion, and later begins receiving disability benefits, said benefits will be based on the reduced base wage of the new classification.

~~(D)~~***(F)*** Extent of Disability – FPDR Extent of Disability categories include the following:

(1) Bi-weekly Disability
Term used during the first year of disability when benefits are payable on the same schedule as the Member's regular payroll. Disability benefits are only payable for time that is authorized by the Member's Attending Physician and as defined in these Administrative Rules. Any transitional duty performed within one year of the date of disability will be included in this Bi-weekly Disability Benefits period.

(2) Monthly Disability
Term used following the first year of Bi-weekly Disability. Disability benefits are only payable for time that is authorized by the Member's Attending Physician and as defined in these Administrative Rules.

(3) Permanent and Partial
Term used for members who have been deemed medically stationary, permanently incapable of performing ~~their~~ ***the Member's*** ~~r~~***R***equired ~~d~~***D***uties in the Fire or Police Bureaus, and capable of Substantial Gainful Activity. ~~Members may be required to submit for an examination by their physician or a physician appointed by the FPDR Director at least once during each twelve-month period. The purpose of the examination will be to determine if the Member's approved service-connected or occupational disability condition(s) continue to prevent the member from performing his/her required duties in the Fire or Police Bureaus.~~ (This statement is already noted in 5.7.09)

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(4) Permanent and Total

Term used for members who have been deemed medically stationary, permanently incapable of performing ~~their~~ ***the Member's*** ~~r~~***R***equired ~~d~~***D***uties ~~duties~~ in the Fire or Police Bureaus, and permanently incapable of any Substantial Gainful Activity. ~~Members may be required to submit for an examination by their physician or a physician appointed by the FPDR Director at least once during each twelve-month period. The purpose of the examination will be to determine if the Member's approved service-connected or occupational disability condition(s) continue to prevent the Member from performing his/her required duties in the Fire or Police Bureau or any other Substantial Gainful Activity.~~ (This statement is already noted in 5.7.09)

~~(E)~~***(G)*** Cessation of Benefits - A disabled Member who is receiving service-connected, or occupational disability benefits ~~pursuant to Article 3 of the Plan~~ at the time he or she attains Disability Retirement Age shall only be eligible to receive disability benefits up to the date he or she attains Disability Retirement Age~~,~~ ~~at which time the~~ disabled ~~Member shall be entitled to receive only a retirement benefit~~. ***.***

~~(F)~~***(H)*** Post Disability Retirement Age Benefits – Pursuant to Section 5-306 (f) of Chapter 5 of the City Charter, a ~~m~~***M***ember ~~covered under Article 3 of the Plan,~~ who is actively employed and suffers a service-connected~~,~~ or occupational disability after attaining Disability Retirement Age, shall be eligible to receive disability benefits for a period of up to two (2) years from the date of such disability, ***if ~~at~~ the service-connected injury/illness or occupational disability is determined by the Director to be temporary*** ~~at which time the disabled Member shall be entitled to receive only a retirement benefit~~ .

5.7.03 – APPLICATION FOR BENEFITS

(A) No disability benefits shall be paid to a Member unless the Member files with the Director a complete and timely application requesting such benefits***, including but not limited to applications for reimbursement of wages or restoration of leave accrual***. ***Applications for disability benefits must be submitted to the Director no later than 30 days after the Member is injured or experiences an illness or occupational disability, unless the Member establishes good cause for failing to do so. Failure to file an application within the time specified bars a Claim for disability benefits.***

(B) Applications shall be made on forms prescribed by the Director. The Director may require the Member to provide any information that ~~it~~ ***the Director*** deems necessary to carry out FPDR's duties.

(C) Applications for disability benefits may be made by the Member, or the Member's authorized representative. A representative shall submit to the Director written proof of the representative's authority.

~~(D)~~ ~~Applications for disability benefits must be submitted to the Director no later than 30 days after the Member is injured or experiences an illness, unless the Member establishes good cause for failing to do so. Failure to file an application within the time specified bars a Claim for disability benefits.~~

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~~(E)~~***(D)*** By making application for disability benefits, each applicant thereby authorizes the Director to recover overpaid Interim Disability Benefits paid to the Member, should the application/Claim for benefits be withdrawn by the Member or be denied by the Director and the denial become final.

~~(F)~~***(E)*** By making application for disability benefits, each applicant thereby authorizes the Director to request and obtain from any physician, health practitioner, hospital, clinic, pharmacy, employer, employment agency, government agency, institution or any other person or organization, any information within any of their records or knowledge regarding the applicant's health, income and employment which in any way relates to the applicant's Claim of disability and/or capacity to engage in Substantial Gainful Activity.

The applicant thereby also authorizes all such physicians, practitioners, hospitals, clinics, pharmacies, employers, employment agencies, governmental agencies, institutions, persons, and organizations to furnish such medical, health, employment and income information to the Director upon request. The applicant recognizes that the information disclosed may contain information that is protected by federal and state law and, by filing an application for disability benefits, specifically consents to the disclosure of such information. All applications for disability benefits shall contain a form to be signed by the applicant authorizing the release of the foregoing information to the Director or the Director's authorized representatives.

~~(G)~~***(F)*** All applications for service-connected ***injury/illness or occupational*** disability benefits shall contain a report ~~of a superior officer, the signature of the Chief of the Bureau affected and a report~~ of the Member's Attending Physician.

~~(H)~~ ~~All applications for occupational disability benefits shall contain a report of a superior officer, the signature of the Chief of the Bureau affected, together with a report of the Member's Attending Physician.~~

~~(I)~~***(G)*** Although information comes from many sources, Claim ~~assessment~~ ***evaluation*** is frequently based in part on information provided by the Fire and Police Bureaus. If the ~~B~~***b***ureau designates a process for requesting documents, then ~~the Fund~~ ***FPDR*** staff will comply with that process. With the exception of attorney-client privileged documents, all information gathered and made part of the Claim file will be accessible to the ~~claimant~~***Member, or the Member's authorized representative***, upon the ~~claimant's~~ ***Member's*** request. If a ~~B~~***b***ureau deems some records as privileged, it is that B***b***ureau's responsibility to identify what information is privileged and to withhold the information.

(H) A Member is required to cooperate with FPDR staff in the investigation of an application for benefits. This includes submitting for and cooperating with personal or telephone interviews and any other gathering of information. Failure to cooperate with this rule in an initial Claim for benefits may delay a compensability determination or result in a Claim denial. Failure to cooperate with this rule on any application for benefits subsequent to approval of the initial Claim may result in a suspension of benefits.

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5.7.04 – CLAIM APPROVAL OR DENIAL

(A) Disability Claim applications fall into one of the following two categories:

(1) Service-Connected Disability Claims – Except for stress or mental disorder claims, the Director shall determine the existence of a disability and whether the preponderance of the evidence indicates it arises out of and in the course of the Member's employment.

A Member shall not be eligible for the service-connected disability benefit based on an injury suffered in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties or incurred while engaging in, or as the result of engaging in, any recreational or social activities solely for the Member's personal pleasure. (Relocated from after (e) below.)

Stress or Mental Disorder Claims – The Director shall determine if each of the following elements exists:

(a) The employment conditions producing the stress or mental disorder exist in a real and objective sense;

(b) The employment conditions producing the stress or mental disorder are conditions other than conditions generally inherent in police and fire employment or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment;

(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical ~~and~~ ***or*** psychological community;

(d) There is clear and convincing evidence that the stress or mental disorder arose out of and in the course of employment as an Active Member; and

(e) The Member's employment conditions are the primary cause of the stress or mental disorder.

~~A Member shall not be eligible for the service-connected disability benefit based on an injury suffered in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties or incurred while engaging in, or as the result of engaging in, any recreational or social activities solely for the Member's personal pleasure.~~

(2) Occupational Disability Claims – The Director shall presume a Member is eligible for an occupational disability enumerated in 5-306(c) of the City Charter unless the Director determines, by a preponderance of the evidence, the occupational disability was not contracted as a result of service as a police officer or fire fighter.

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(B) The Director shall provide written notification of Claim approval or Claim denial to the Member or the Member's representative, and the Member's ~~a~~***A***ttending ~~p~~***P***hysician within sixty (60) days of the Director's receipt of a written application for benefits. This applies to the initial claim for benefits and subsequent Claims for Recurrence or Aggravation benefits.

(1) Notice of Approval – A Notice of Approval shall be addressed to the Member and include the mailing date of the notice, and the statement that the ~~injury/illness~~ ***service-connected injury/illness or occupational disability*** occurring on the particular date has been approved. The notice also shall include information on how the Member can request reimbursement for covered expenses personally paid for by the Member.

(2) Notice of Denial – A Notice of Denial shall be addressed to the Member and include the mailing date of the notice, and be sent via certified mail. The notice also shall include the factual and legal reasons for the denial, and a statement on the Member's right to appeal the denial to an independent hearings officer for review.

(C) If sufficient information is not available within sixty (60) days of the Director's receipt of a written application for benefits, FPDR will provide a written notice to the Member on the status of the review. If a Notice of Approval or Notice of Denial issues more than 90 days from ~~of~~ the Director's receipt of a written application for benefits, then the claim will be deemed denied and the Member may file a written request for hearing with the Director.

5.7.05 – <u>AMOUNT OF BENEFITS</u>

During the period the Member continues to be eligible under this section, benefits shall be paid as follows:

(A) First year from date of disability:

(1) During the first year from the date of disability, the Member shall be paid 75 percent of the Member's rate of Base Pay in ~~e~~***E***ffect at ~~d~~***D***isability.

(2) The Member's disability benefit rate shall be reduced by 50 percent of any wages earned in other employment during the period the benefit is payable.

(B) Second year from date of disability and after:

(1) The Member shall continue to be paid the benefit described in "Paragraph A" after one year from the date of disability until the earliest date on which the Member is both medically stationary and capable of Substantial Gainful Activity.

(C) Fourth anniversary of the date of disability:

(1) If not medically stationary sooner, the Member shall be deemed medically

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stationary for purposes of this Section on the fourth anniversary of the date of disability, regardless of the status of the Member's medical condition.

(2) If the Member is incapable of Substantial Gainful Activity, the benefit will remain at 75 percent of the Member's rate of Base Pay in ~~e~~***E***ffect at ~~d~~***D***isability.

(3) If the Member is capable of Substantial Gainful Activity, the benefit shall be 50 percent of the Member's rate of Base Pay ***in Effect*** at ~~d~~***D***isability, reduced by 25 percent of any wages earned in other employment during the same period.

(D) The minimum benefit shall be 25 percent of the Member's rate of Base Pay ***in Effect at Disability***, regardless of the amount of wages earned in other employment.

(E) Notwithstanding any other provision of ~~the~~ Chapter ***5*** ~~or~~ ***of*** the City Charter, ~~or~~ ***a disabled Member receiving or eligible to receive service-connected or*** ~~O~~ ***o***ccupational ~~D~~***d***isability ~~B~~***b***enefits under Section 5-306 shall not receive any such benefit for periods of time during which the Member is incarcerated subsequent to and for the conviction of a crime. One-half of such benefit, however, shall be payable to the Member's spouse, if not incarcerated, or Member's minor children, during such periods of incarceration. ***FPDR reserves the right to recover overpaid amounts in situations where a Member has been incarcerated for a period of time prior to conviction of a crime and the sentence is for time served.***

5.7.06 – <u>FORM OF BENEFITS</u>

(A) The service-connected and occupational disability benefits shall be payable on the same schedule as Member's regular payroll during the first year from the Date of Disability and monthly thereafter. After the first year of disability benefits, the Director may pay the disability benefit on the same schedule as Member's regular payroll if the Member has returned to work and the period of disability is due to part-time employment restrictions or an intermittent absence on an approved service-connected ***injury/illness*** or occupational disability claim. The Director may pay the benefit monthly during the first year of disability if the Member has been medically separated prior to the end of the first year of disability benefits. The benefits shall be adjusted to reflect changes in the rate of Base Pay of the position held by the Member at disability.

(B) After Claim approval ***and prior to the Member reaching Medically Stationary status***, a Member may be paid a disability benefit by FPDR for each ~~authorized~~ ***Documented*** ~~a~~ ***A***bsence from work ~~for periods~~ ***during a scheduled work shift*** of up to four (4) hours to attend any one medical appointment for the Member's approved service-connected or occupational disability benefits Claim. ***As with all applications for benefits under Section 5.7,*** ~~T~~***t***he Member must provide to FPDR written verification of any appointment from the Member's authorized ~~healthcare~~ ***health care*** provider ***within 30 days of the medical appointment***.

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5.7.07 – TRANSITIONAL DUTY PROGRAM

Whenever the Director has medical evidence that a Member who is receiving disability benefits is capable of performing limited transitional duty the Director shall notify the Member's Bureau Chief ***or designee*** of that fact. Included in the notification will be a report of the ~~m~~***M***ember's limitations and a request that the Bureau Chief provide the Member with a job that is compatible with the Member's limitations. Refer to Section 5.10 of these Administrative Rules for additional information on this program.

5.7.08 – AUTHORIZED HEALTH CARE PROVIDERS

(A) All Members drawing disability benefits, of whatever nature shall identify an Attending Physician, as defined by these Administrative Rules and who will be responsible for directing the Member's medical care

(B) Disability authorization is limited to the Member's Attending or Specialty Physician as defined in and under the conditions prescribed for under "Attending Physician" and "Specialty Physician" in Section 5.7.01 of this Administrative Rule. Authorization from an inpatient or outpatient hospital physician (emergency room physician or hospitalist) will be considered on a case-by-case basis.

5.7.09 – RECIPIENT OF DISABILITY BENEFITS

(A) All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member's identified Attending Physician or an Attending Physician appointed by the Director, unless otherwise determined by the Director. ***The purpose of the examination will be to determine if the Member's approved service-connected injury/illness or occupational disability condition(s) continue to prevent the Member from performing the Member's*** ~~r~~***R***equired ~~d~~***D***uties ***in the Fire or Police Bureaus. (Relocated from 5.7.02 (3) and (4).)***

(B) Any Member receiving disability benefits under the Plan shall file with the Director a certificate from the Member's Attending or Specialty Physician of the Member's continued disability for each ***disability*** pay period, unless otherwise waived by the Director.

(C) A Member receiving service-connected ***injury/illness or occupational*** disability benefits, under Article 3 of the Plan, who is released to modified duty and capable of ~~s~~***S***ubstantial ~~g~~***G***ainful ~~a~~***A***ctivity, but who is unable to return to the ~~B~~***b***ureau, shall pursue other employment within the Member's restrictions. ~~"~~Pursue other employment~~"~~ means: an active, serious, and continuing effort to seek full-time work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or résumés.

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5.7.10 – INDEPENDENT MEDICAL EXAMINATIONS

(A) If requested by the Director, any Member ***potentially*** eligible to receive benefits under this program is required to undergo a***n independent*** medical examination ***(IME)*** by one or more licensed physician***s*** or psychologist***s***. Should the Member fail to submit to the examination, or obstruct~~s~~ the same, the Member's rights to benefits may be suspended or reduced by the Director until the exam has taken place.

(B) The Director is not required to schedule an IME appointment during Member's work hours. Members will be required to attend an IME during off work hours, as well as work hours, if so scheduled, ~~and unless there is good cause for not attending the IME. An IME scheduled during a Member's off work hours is not considered good cause, of and by itself, for not attending an IME.~~

(C) FPDR will mail a written notice to the Member by certified and regular mail at least 14 calendar days prior to the IME appointment date. If the Member has an attorney, the Member's attorney shall be simultaneously notified in writing of a scheduled medical examination under these Administrative Rules. FPDR may provide fewer than 14 days notice if the Member agrees.

~~(B) The Member and the Member's attorney shall be simultaneously notified in writing of a scheduled medical examination under these Administrative Rules. Unless waived at the Member's request or with the Member's permission, FPDR may provide fewer than 14 days notice if the Member agrees. The Member's Notification of the medical examination shall be in writing, sent at least ten (10) days prior to the date of the examination, and include the following information:~~

(D) The Member's ***~~n~~otification*** of the medical examination shall include the following information:

(1) The name of the examiner or facility;

(2) A statement of the specific purpose for the examination and~~,~~ identification of the medical specialties of the examiners;

(3) The date, time and place of the examination; and

(4) The first and last name of the Member's Attending Physician and verification that the Member's Attending Physician was informed of the examination.

~~Ten day notification may be waived at Member's request or with the Member's permission.~~

(E) The Member may request a change in the appointment date, time or place ~~for good cause~~. <u>With approval of the director, attempts will be made to reschedule the IME. Until a new IME appointment is scheduled and approved by the director, the member is required to attend the original IME appointment.</u>

~~(C)~~***(F)*** When necessary, the following expenses associated with the Member's attending

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the medical examination will be considered by the Director:

(1) Reimbursement of reasonable cost of public transportation or use of a private vehicle; and

(2) Reimbursement of reasonable cost of child care, meals, lodging and other related services.

~~(D)~~***(G)*** Requests for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely review and consideration prior to the date of the examination. Mileage reimbursement will be based on City of Portland rates in effect at the time of incurred expense.

(H) The Member must cooperate with a scheduled IME by arriving at the date and time of the scheduled appointment and cooperating with the examination and IME Physician ~~unless the Member can show good cause for noncooperation.~~

5.7.11 – SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS

~~(A) Non-cooperation in vocational rehabilitation or failure to pursue other employment. For service-connected and occupational disability benefits under Article 3, if the Director obtains evidence that the Member is not cooperating in vocational rehabilitation, including participating in a Substantial Gainful Activity Assessment, or is not pursuing other employment, the Director shall notify the Member of the Director's determination to suspend, reduce or terminate benefits. A summary of the evidence and the decision shall be provided to the Member. By appointment and during regular business hours, the Member shall be entitled to review the non-privileged evidence upon which the decision is based. The Member will have 14 days to provide a written response for the Director's reconsideration. The Member shall also be notified of the rights under Charter Section 5-202(h) of the right to appeal for a Hearing. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.~~

~~(B)~~***(A)*** Service-connected and ~~o~~*O*ccupational ~~d~~*D*isability b*B*enefits ~~under Article 3 –~~

The Director may determine to suspend, reduce or terminate benefits for service connected and occupational disability benefits ~~under Article 3 of the Charter,~~ if the Director obtains evidence that:

(1) The Member is not cooperating in treatment;

(2) The Member is not cooperating in a designated examination under Charter Section 5-202(a);

(3) The Member is not cooperating in the administration of the Claim and/or fulfilling the Member's duties and obligations under the Charter and the ***FPDR*** ~~a~~*A*dministrative ~~r~~*R*ules;

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(4) The Member is no longer disabled or eligible;

(5) The Member's ~~injury/illness~~ ***service-connected injury/illness or occupational disability*** no longer arises out of and in the course of the Member's employment with the Bureau of Fire and Rescue or the Police Bureau, as provided for in Section 5-306 of the Charter.

(6) The Member has engaged in fraud or a material misrepresentation;

(7) The Member has failed to seek other employment once he/she has been deemed capable of ~~s~~***S***ubstantial ~~g~~***G***ainful ~~a~~***A***ctivity, or has achieved his/her vocational rehabilitation goals;

(8) The Member has failed to provide notification and request approval to engage in other employment within the specified ~~time frame~~ ***timeframe***.

(9) The Member has failed to provide other/outside wage information to allow for wage offset purposes within the specified ~~time frame~~ ***timeframe***; or

(10) The Member has failed to participate in an Independent Medical Examination or other Director arranged medical or mental examination.

(11) The Member is not cooperating in vocational rehabilitation, including participating in a Substantial Gainful Activity assessment.

~~(C)~~***(B)*** The Director shall notify the Member of the Director's decision to suspend, reduce or terminate benefits. A summary of the evidence and the decision shall be provided to the Member. By appointment and during regular business hours, the Member shall be entitled to review the ~~non-privileged~~ ***nonprivileged*** evidence upon which the recommendation is based. The Member will have 14 days to provide a written request for the Director's reconsideration. The Member shall also be notified of the rights under Charter Section 5-202(h) ~~and the right~~ to appeal ~~for a hearing~~ ***the decision*** as provided for in Section ~~3~~ ***5.6*** of the~~se~~ ***FPDR*** Administrative Rules. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.

5.7.12 – <u>OFFSET TO SERVICE-CONNECTED AND OCCUPATIONAL DISABILITY BENEFITS PAYABLE ~~UNDER ARTICLE 3 OF THE PLAN~~</u>

(A) Members receiving service-connected ***injury/illness*** or occupational disability benefits ~~under Article 3 of the Plan~~ who intend to enter the employ of any person, firm or corporation, or engage in any activity which will result in the Member receiving "wages earned in other employment" shall notify the Director, in writing, of the Member's intention. The ~~N~~***n***otice shall be accompanied by a written statement reflecting an estimate of the Member's earnings from such activities. Thereafter, the Member shall furnish the Director with such information and at such intervals as the Director deems necessary to implement the wage offset provisions of this ***Administrative*** ~~r~~***R***ule.

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(B) Guidelines for Wage Offset Administration

(1) A Member must complete the "Outside Employment" section of the "Disability in Line of Duty Report" (DILD) at the time of Claim filing. The FPDR ***Director*** may require an update on the Member's outside employment status periodically throughout the Member's course of disability.

(2) If at ~~anytime~~ ***any time*** during the Member's disability he/she has or wishes to engage in outside employment, the Member will be required to submit a completed "Request to Engage in Outside Employment" form for the Director's approval. Failure to do so may result in a reduction or suspension of benefits.

(3) Once the Request to Engage in Outside Employment has been approved by the Director, the Member will be required to submit a report of his/her outside earnings upon the request of and at intervals determined by the Director.

(4) A Report of ~~e~~***E***arnings ***from Outside Employment*** ~~report~~ will be returned with proper documentation within ~~time frame~~ ***timeframe*** stated in the request. Failure to do so may result in a reduction or ~~s~~***S***uspension of ~~b~~***B***enefits.

(5) The term wages earned in other employment includes the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer ~~other than the Bureau of Fire or Bureau of Police~~. The term wages earned in other employment also includes any salary, fees, commissions, profits or other remuneration that the Member receives from his or her self-employment in a profession, trade or business. The term wages ***in other employment*** does not include income from investments such as interest, dividends, rentals and capital gains. However, if ~~you~~ ***the Member*** own***s*** a rental(s) and the IRS requires ***that*** ~~you to~~ ***the*** ~~report~~ ~~your~~ rental income ***be reported*** as self-employment income, ~~your~~ ***such*** rental income is considered "outside wages" and is subject to the wage offset.

(6) Documentation acceptable for reporting outside employment wages include valid copies of payroll records, pay stubs, W-2 and income tax returns.

(7) The Member will have the option of choosing to have future disability benefits reduced to the 25% minimum in lieu of submitting wage information to FPDR for purpose of wage offset.

(8) When a Member who has been determined to be capable of Substantial Gainful Activity (SGA) chooses to pursue self-employment rather than seek employment, FPDR will impute earnings to the Member of one-third of the Member's Base Pay in Effect at Disability. The Member will be required to submit his/her tax returns and other wage documentation. If the tax returns show more in earnings than one-third of Base Pay in Effect at Disability, the difference will also be imputed as earnings to the Member. ~~If the SGA shows the Member capable of earning more than one-third of base pay, the SGA analysis percentage would be~~

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~~used.~~

5.7.13 – PERS OFFSET

FPDR ~~D~~***d***isability benefits will be offset by ***Public Employees Retirement System (***PERS***)*** ~~D~~***d***isability ~~B~~***b***enefits pursuant to Chapter 5 of the City Charter.

5.7.14 – RECOVERY OF OVERPAYMENTS

(A) The Director shall recover overpayments of disability benefits paid to the Member. Recovery may be made by offsetting an amount of any future payment until the overpayment is recovered in full.

(B) Interim Disability Benefits paid to the Member under a Claim for service-connected ***injury/illness*** or occupational disability benefits that is withdrawn by the Member or is denied by the Director and the denial becomes final, shall constitute an overpayment and must be repaid in full. The Director shall arrange with the Member the method of repayment.

(1) The Member may issue a check payable to City of Portland, by and through FPDR, for the full amount of the overpayment; or

(2) The Member may give authorization to his or her bureau to repay the amount due out of the Member's pay check (either in full at the time accrued leave replaces FPDR paid time or otherwise within the time period authorized for repayment); or

(3) The Member may repay the overpayment through a repayment plan agreed to by the Director.

(C) The overpayment must be repaid in full within a period of time that is no greater than twice the number of days that Interim Disability Benefits were paid. For example, if 60 days of Interim Disability Benefits were paid to the Member, he or she will have up to 120 days to repay the overpayment in full.

(D) The Director will pursue the appropriate legal action should the overpayment not be repaid in full according to these Administrative Rules.

5.7.15 – DISABILITY RETIREMENT AGE

(A) Service-connected ***injury/illness*** or occupational disability benefits payable ~~under Article 3 of the Plan~~ ***to a FPDR Two Member*** shall cease ~~upon attaining~~ ***at*** Disability Retirement Age except as provided in Section ~~B~~***C*** hereof. A Member receiving service-connected ***injury/illness*** or occupational disability benefits shall be eligible to receive a retirement benefit at Disability Retirement Age, which shall be the earlier of the dates the Member is (1) credited with 30 Years of Service for retirement benefit purposes or (2) the date the Member attains social security retirement age. ~~Since a Member who receives a disability benefit which is less than 75 percent of the Member's Base Pay in any given year will not be credited with a full Year of Service for any such year (refer to § 5-302(c) of the Plan), there will be more~~

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~~than 30 years between the time a Member was hired and the time he or she will be deemed to have reached Disability Retirement Age based on 30 Years of Service. For example, assume that a Member who has 19 Years of Service becomes disabled. Assuming that the Member receives service-connected disability benefits equal to 75 percent of Base Pay during the first year of disability and 50 percent of Base Pay thereafter, the Member would have to be disabled for 16 years before he or she would be considered to have attained Disability Retirement Age based upon 30 Years of Service.~~ For purposes of this rule, social security retirement age means the retirement age provided in 42 USC § 416(l)(1).

(B) Service-connected injury/illness or occupational disability benefits payable to a FPDR Three Member shall cease at Normal Retirement Age under PERS except as provided in Section C hereof.

~~(B)~~***(C)*** ~~A disabled Member who is receiving service-connected or occupational disability benefits pursuant to Article 3 of the Plan at the time he or she attains Disability Retirement Age shall only be eligible to receive disability benefits up to the date he or she attains Disability Retirement Age, at which time the disabled Member shall be entitled to receive only a retirement benefit.~~ ***If the Director determines the service-connected injury/illness or occupational disability to be temporary, benefits may continue after Disability Retirement Age for a FPDR Two Member or PERS Normal Retirement Age for a FPDR Three Member up to two (2) years from the date of such disability.*** A Member ~~covered under Article 3 of the Plan~~, who is actively employed and suffers a service-connected **illness/injury,** or occupational disability after attaining Disability Retirement Age ***for a FPDR Two Member or PERS Normal Retirement Age for a FPDR Three Member***, shall be eligible to receive disability benefits for a period of up to two (2) years from the date of such disability~~, at which time the disabled Member shall be entitled to receive only a retirement benefit~~ ***if the Director determines the disability to be temporary***.

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