



**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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## FPDR Administrative Rules

### Section 5.7 – Service-Connected or Occupational Disability Benefits Plan 2 & 3

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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 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 thirty (30) days from the first visit on the initial Claim or for twelve (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 Base Pay 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 their 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 member’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 Member, their 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.”

“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

required duties 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 their 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.

"Full-Time Work." For the purpose of Other Employment, the term "Full-Time Work" means working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

"Independent Medical Examination (IME)." The term "Independent Medical Examination" means an examination by one or more licensed medical providers in order to provide an opinion of findings in connection with a service-connected injury/illness or an occupational disability Claim. A Physical Capacity Evaluation (PCE) or a Work Capacities Evaluation (WCE) is considered an "IME" under these rules.

"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 their 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 Member'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.

"Other Employment." The term "Other Employment" means employment with any person, firm, company, corporation, government agency, municipality or Self-Employment, and does not include employment as an Active Member of the Bureau of Fire or Bureau of Police, or work performed as part of an approved Transitional Duty Return to Work Program in accordance with Administrative Rule 5.10.03.

"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.

“Self-Employment.” The term “Self-Employment” means the Member is working as:

- a sole proprietor who conducts a trade or business;
- an independent contractor;
- a member of a partnership that conducts a trade or business; or
- otherwise is in business for themselves

Self-Employment is considered Full-Time Work only when the Member is working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

“Significant Factor.” The term “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 in Effect at Disability.

“Suspension of Benefits.” The term “Suspension of Benefits” means the payment of disability benefits are stopped by the Director for the period of suspension when the Member has failed to comply with the provisions of Chapter 5 of the City Charter or Administrative Rules.

“Wages Earned in Other Employment.” The term “Wages Earned in Other Employment” includes:

- (A) the gross salary, overtime pay, fees, commissions, and other remuneration received by a Member for services rendered as an employee to an employer in Other Employment other than the Bureau of Fire or Bureau of Police;
- (B) any salary, fees, commissions, profits and other remuneration that the Member receives from their Self-Employment in a profession, trade or business; and
- (C) any rental income that the IRS requires to be reported as Self-Employment income.

The term “Wages Earned in Other Employment” does not include income from investments such as interest, dividends and capital gains.

“Worsening.” The term “Worsening” means objective findings indicating a deterioration of 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 of 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 – DISABILITY BENEFITS GENERALLY**

- (A) Eligible Members with pended service-connected 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 their required duties because of an injury or illness arising out of and in the course of their 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 their required duties 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 them.

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

- (C) Changes in Employment Status While on Disability
  - (1) If Member is demoted during the time that they are receiving disability benefits, their disability benefit will be based on the Base Pay of the position held at the time the Member first became disabled on 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) 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 (1) 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 required duties 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 their required duties in the Fire or Police Bureaus.

(4) Permanent and Total

Term used for members who have been deemed medically stationary, permanently incapable of performing their required 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 their required duties in the Fire or Police Bureau or any other Substantial Gainful Activity.

(E) 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 they attain Disability Retirement Age shall only be eligible to receive disability benefits up to the date they attain Disability Retirement Age, at which time the disabled Member shall be entitled to receive only a retirement benefit.

(F) Post Disability Retirement Age Benefits – Pursuant to Section 5-306 (f) of Chapter 5 of the City Charter, a member 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, 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.
- (B) Applications shall be made on forms prescribed by the Director. The Director may require the Member to provide any information that 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 thirty (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.
- (E) 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) 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) All applications for service-connected injury/illness or occupational disability benefits shall contain a report of a superior officer and a report of the Member's Attending Physician.
- (H) Although information comes from many sources, Claim evaluation is frequently based in part on information provided by the Fire and Police Bureaus. If the bureau designates a process for requesting documents, then the 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



Member, or the Member's authorized representative, upon the Member's request. If a bureau deems some records as privileged, it is that bureau's responsibility to identify what information is privileged and to withhold the information.

- (l) 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 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.

#### **5.7.04 – CLAIM APPROVAL OR DENIAL**

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

- (1) Service-Connected Disability Claims under Section 5-306(b) and (c): 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.

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 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 the stress or mental disorder.
- (2) Occupational Disability Claims under Section 5-306(d): the Director shall presume a Member is eligible for an occupational disability enumerated in 5-306(d) 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.

- (3) Oregon Statutory Presumption Claims: The Director shall evaluate the following Oregon statutory presumption claims in accordance with the appropriate Oregon Revised Statute (ORS).
  - (a) Firefighter Heart/Lung Presumption claims as described in ORS 656.802(4).
  - (b) Post-Traumatic Stress Disorder (PTSD) and Acute Stress Disorder claims as described in ORS 656.802(5).
  - (c) Firefighter Cancer Presumption claims as described in ORS 656.802(7).
- (4) COVID-19 Claims:
  - (a) Definition: the term “COVID-19 Exposed Employees” means Active Members of the FPDR Plan who are required by their work to have hands-on contact with members of the public or coworkers.
  - (b) For COVID-19 Exposed Employees, the City will treat a diagnosis of COVID-19 as occurring at work, unless clear and convincing evidence indicates that it is not service connected.
  - (c) For Active Members who take a COVID vaccine, incur an adverse reaction, and file a complete application for disability benefits for the side effects of the vaccine, FPDR will treat the need for medical treatment and any time loss as occurring at work unless clear and convincing evidence indicates that the vaccine was not a Significant Factor in causing the need for medical treatment or the inability to perform the Member’s required duties. This provision is effective August 30, 2021.
  - (d) Explanation: Claims filed by COVID-19 Exposed Employees who are diagnosed with COVID-19 will be compensable unless the City shows by clear and convincing evidence that it is not service connected. Such provision of medical benefits and time loss shall be consistent with statute, the FPDR Plan and/or FPDR’s administrative rules or Charter.
  - (e) For COVID-19 Exposed Employees who have not been diagnosed with COVID-19 but 1) come into contact at work with someone diagnosed with COVID-19, or develop symptoms at work consistent with COVID-19, as defined by the Center for Disease Control (CDC), and 2) the COVID-19 Exposed Employee seeks medical advice within a reasonable time of either known exposure or the development of symptoms, and then follow through within a reasonable time for testing for COVID-19 if recommended by the medical provider, will receive medical benefits and time loss. Such provision of medical benefits and time loss shall be consistent with statute, the FPDR Plan and/or FPDR’s administrative rules or Charter.

- (f) Disability benefits will be paid to Active Members who are under a mandatory quarantine ordered under the authority of the Multnomah County Health Officer. Such provision of time loss shall be consistent with statute, the FPDR Plan and/or FPDR's administrative rules or Charter. The FPDR Plan does not permit reimbursement to Members for "room and board" costs incurred to quarantine outside of their home at alternative locations.
  - (g) These Administrative Rules, 5.7.04(5)(a)-(e), are effective immediately and will remain in effect until 180 days after any COVID-related State of Emergency declared by the Mayor expires.
- (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 Attending Physician 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 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 ninety (90) days from 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 – AMOUNT OF BENEFITS**

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 Effect at Disability.

- (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 (1) 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 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 Effect at Disability.
  - (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 Disability, 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 Chapter 5 of the City Charter, a disabled Member receiving or eligible to receive service-connected or occupational disability benefits 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 – FORM OF BENEFITS**

- (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 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, a Member may be paid a disability benefit by FPDR for each authorized absence from work for periods of up to four (4) hours to attend any one medical appointment for the Member's approved service-connected or occupational disability benefits Claim. The Member must provide to FPDR written verification of any appointment from the Member's authorized health care provider.

#### **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 Member'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 required duties in the Fire or Police Bureaus.
- (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 Substantial Gainful Activity, but who is unable to return to the bureau, 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.

#### **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 an Independent Medical Examination (IME) by one or more licensed physician or psychologist. Should the Member fail to submit to the examination or obstructs the same, the Member's rights to benefits may be suspended or reduced by the Director until the exam has taken place.
- (B) The Member may request a change in the IME appointment date, time or place for good cause.
- (C) FPDR will mail a written notice to the Member by certified and regular mail at least fourteen (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 fourteen (14) days notice if the Member agrees.
- (D) The Member's notification of the medical examination shall include the following information:
  - (1) the name of the examiner and 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.
- (E) When necessary, the following expenses associated with the Member's attending 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.
- (F) 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.

## **5.7.11 – SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS**

### **(A) Service-connected and Occupational Disability Benefits**

The Director may determine to suspend, reduce or terminate benefits for service connected and occupational disability benefits, 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), an Independent Medical Examination or other Director arranged medical or mental examination;
- (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 Administrative Rules;
- (4) the Member is no longer disabled or eligible;
- (5) the Member's 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 they have been deemed capable of Substantial Gainful Activity, or has achieved their vocational rehabilitation goals;
- (8) the Member has failed to provide notification and request approval to engage in Other Employment within the specified timeframe;
- (9) the Member has failed to provide other wage information to allow for wage offset purposes within the specified timeframe; or
- (10) the Member is not cooperating in vocational rehabilitation, including participating in a Substantial Gainful Activity assessment.

- (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 evidence upon which the recommendation is based. The Member will have fourteen (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) to appeal the decision as provided for in Section 5.6 of the FPDR Administrative Rules. Any such written request must be filed with the Director within sixty (60) days after the date of the decision being appealed.

**5.7.12 - OFFSET TO SERVICE-CONNECTED AND OCCUPATIONAL DISABILITY BENEFITS PAYABLE UNDER ARTICLE 3 OF THE PLAN**

- (A) Members receiving service-connected 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 notice 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 Rule.
- (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 Director may require an update on the Member's Other Employment status periodically throughout the Member's course of disability.
  - (2) If at any time during the Member's disability they have engaged or wish to engage in Other 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 their outside earnings upon the request of and at intervals determined by the Director.
  - (4) A "Report of Earnings from Outside Employment" will be returned with proper documentation within the timeframe stated in the request. Failure to do so may result in a reduction or suspension of benefits.
  - (5) Documentation acceptable for reporting Other Employment wages include valid copies of payroll records, pay stubs, W-2 and income tax returns.
- (C) Guidelines for Substantial Gainful Activity Wage Offset Administration
- (1) When a Member who has been determined to be capable of Substantial Gainful Activity (SGA) chooses to pursue Self-Employment rather than seek regular employment:
    - (a) The Director will initially assume the Member's Self-Employment wages as zero dollars. The Director will calculate an estimate of Self-Employment wages when sufficient wage, hour and expense documentation is available but no later than six (6) months after the Member's Self-Employment started.



- (b) The Member will be required to submit their tax returns and other wage, hour and expense documentation annually or when requested by the Director.
  - (c) After receipt of wage, hour and expense documentation, the Director will recalculate the wage offset for the past year and either pay the Member any additional benefits due or calculate an overpayment. The Director will also re-estimate the Member's Self-Employment wages for the current and next year.
  - (d) The Director will recover any overpayment by offsetting one-twelfth of the overpaid amount from future payments until the overpayment is recovered in full.
- (2) 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.

#### **5.7.13 – PERS OFFSET**

FPDR disability benefits will be offset by Public Employees Retirement System (PERS) disability benefits 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 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;
  - (2) The Member may give authorization to their 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.
  - (4) The overpayment must be repaid in full within a period of time that is no greater than twice the number of weeks that Interim Disability Benefits were paid. The Director may extend the repayment period if the Director has

determined that the repayment places an undue hardship on the Member and the Member and the Director have signed a repayment agreement. However, the extended repayment period shall not exceed twelve (12) months.

- (C) 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 to a FPDR Two Member shall cease at Disability Retirement Age except as provided in Section 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 thirty (30) Years of Service for retirement benefit purposes or (2) the date the Member attains Social Security retirement age. 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.
- (C) 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 who is actively employed and suffers a service-connected injury/illness, 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, if the Director determines the disability to be temporary.