

## ARTICLE 2. POLICE AND FIREFIGHTERS' PENSION AND DISABILITY FUND (1977 FUND)

### Rule 1. Membership

#### 35 IAC 2-1-1 Application for membership

Authority: IC 36-8-8-5

Affected: IC 36-8-8-7

Sec. 1. (a) Employee membership applications for the 1977 Police and Firefighters' Pension and Disability Fund (1977 Fund) will be accepted by the 1977 Fund if signed by the local board and the appointing authority.

(b) All application materials and other personal records containing medical information shall be treated as confidential medical information to the extent required under the Americans with Disabilities Act (as defined in 35 IAC 2-9-2(b)). (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-1-1; filed May 9, 1979; 11:31 a.m.: 2 IR 681; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; filed May 7, 1998, 4:15 p.m.: 21 IR 3327; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

#### 35 IAC 2-1-2 Prior service credit; prerequisites

Authority: IC 36-8-8-5

Affected: IC 36-8-8-7; IC 36-8-8-8

Sec. 2. Prior service credit shall be given to any member of the 1977 Police and Firefighters' Pension and Disability Fund (1977 Fund) providing the following conditions are met:

(1) As used in this section, "prior service" means any services or duties performed as a member of the 1977 Fund after April 30, 1977.

(2) The police officer or firefighter was a member of the 1977 Fund and had contributions withheld for membership.

(3) The city, town, or township to which the police officer or firefighter is transferred or has been hired by is a member of the 1977 Fund.

(4) The member repays, either in a lump sum or a series of payments determined by the 1977 Fund, the amount of contributions plus interest which was refunded to him.

(5) For the purpose of computing benefits, prior service shall be included only once.

(*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-1-2; filed May 9, 1979; 11:31 a.m.: 2 IR 681; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; filed May 7, 1998, 4:15 p.m.: 21 IR 3327; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

#### 35 IAC 2-1-3 Effective date

Authority: IC 36-8-8-5

Affected: IC 36-8-8-7

Sec. 3. Effective Date. Enrollment and pension fund rights begin on the later of the actual hire date on the membership record document or the admission approval date of the 1977 Fund. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-1-3; filed Aug 6, 1981, 2:30 p.m.: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

#### 35 IAC 2-1-4 Leave of absence

Authority: IC 36-8-8-5

Affected: IC 36-8-8-6

Sec. 4. (a) As used in this article, "FMLA" refers to the Family and Medical Leave Act (29 U.S.C. 2601 et seq.) and all applicable regulations and amendments.

(b) This section and IC 36-8-8-6 shall be administered in a manner consistent with the FMLA.

(c) If the member is compensated while on an FMLA covered leave, the statutory contributions must be maintained. A member may make contributions as provided in IC 36-8-8-6 during an unpaid FMLA leave, although such contributions would not result in credit for service for benefit purposes in any event. The member's employer is not required to make contributions with respect to an

unpaid FMLA leave.

(d) In calculating credit for vesting and eligibility purposes, time spent on an FMLA protected leave shall be counted, including any time spent receiving disability benefits while on such leave.

(e) A member seeking credit for an FMLA leave must provide documentary evidence demonstrating that the statutory requirements have been satisfied. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-1-4; filed May 7, 1998, 4:15 p.m.: 21 IR 3327; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

### **35 IAC 2-1-5 1977 Fund service purchases**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-8.3

Sec. 5. (a) Under various provisions under IC 36-8-8, eligible members of the 1977 Fund may purchase service.

(b) The cost to purchase such service shall be the total actuarial cost of the service. The fund shall provide the eligible fund member with information with respect to the cost of such service.

(c) An eligible fund member may purchase such service subject to the following:

(1) Service may be purchased in one (1) month increments. The minimum service purchase is one (1) year for a member who elects to purchase service through a finance agreement.

(2) Installment payments are made under the terms of the finance agreement.

(3) Any such purchase may be made via a direct cash payment, a direct rollover as allowed by statute, or a combination of both.

(4) Any direct rollover may not exceed the actual cost of such service as established by the fund.

(5) Payment may be made in a lump sum, quarterly or annual installments for a period not to exceed five (5) years. Any installment may bear interest at the interest rate (defined within this section) effective on the date of the first installment. Any payments are subject to applicable Internal Revenue Service limits, and the fund may limit any payments in a manner necessary to comply with these limits.

(d) In the event of a payment default under the terms of the finance agreement, a partial service credit amount will be determined by the 1977 Fund. The partial service credit amount will be based on the payments made as of the date of payment default and the actuarial cost of the service. The minimum amount of partial service credit will be one (1) month. Partial service will be credited in monthly increments. The fund member is not eligible to make service purchase payments after the date of the payment default.

(e) A partial service credit will be determined by the 1977 Fund if the service purchase is not completed. The minimum amount of partial service credit will be one (1) month. Service will be credited in monthly increments based on the total payments and the actuarial cost of the service. Payments for a service purchase may not be made after the date of a payment default or the date of separation of employment.

(f) Any interest rate used will be set as determined by PERF. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-1-5; adopted Feb 19, 2010: 20100310-IR-035100124ONA; adopted Nov 19, 2010: 20101208-IR-035100722ONA*)

### **Rule 1.1. Medical Fitness Examinations (Voided)**

*NOTE: Voided by P.L.4-1992, SECTION 55, effective January 26, 1992 (retroactive).*

### **Rule 2. Contributions; Withdrawal**

#### **35 IAC 2-2-1 Refund of deceased active member's contributions**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-8; IC 36-8-8-16

Sec. 1. Deceased Active Member's Contributions. A deceased active member's contributions plus accumulated interest will be refunded to the estate of the deceased member, if the deceased member has no survivors eligible for benefits under the fund.

If the total amount of survivor benefits paid does not exceed the member's total contribution plus accumulated interest, the difference shall be paid to the member's estate. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-2-1; filed May 9, 1979, 11:31 am: 2 IR 681; filed Aug 6, 1981, 2:30 pm: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898;*

adopted Nov 9, 2007: 20071205-IR-035070818ONA)

**35 IAC 2-2-2 Interest on employees' contribution accounts**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-8

Sec. 2. Employee Contribution Interest Crediting. When crediting interest on employee contribution accounts the 1977 Fund shall:

(1) Credit interest on the prior fiscal year-end balance.

(2) Cease crediting interest to accounts which have no activity after five (5) years after the last contribution posting, and, which have total service credit of less than twenty (20) years.

(3) Not credit interest at a rate greater than the investment income earned.

*(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-2-2; filed May 9, 1979, 11:31 a.m.: 2 IR 681; filed Aug 6, 1981, 2:30 p.m.: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

**Rule 3. Retirement Benefits**

**35 IAC 2-3-1 Reemployment after retirement**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-10; IC 36-8-8-11.5

Sec. 1. If a member is receiving disability or retirement benefits from the 1977 Fund and is reemployed in a position covered by this chapter *[sic]*, benefits will terminate until the member has terminated service for the second time. The benefits will then be computed on the total years of credited service. If a member is reemployed not less than thirty (30) days after retirement by the same unit in a position not covered by this chapter *[sic]*, then the member will continue to receive benefits unless the PERF board receives from the Internal Revenue Service a determination that prohibits the implementation. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-3-1; filed May 9, 1979, 11:31 a.m.: 2 IR 681; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Nov 21, 2008: 20090107-IR-035080955ONA)*

**35 IAC 2-3-2 Payment method**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-10

Sec. 2. Retirement Benefits. The benefits shall be paid on the 15th of each month and be payable from first: the member's contribution account, and second from the employer's contribution account. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-3-2; filed Aug 6, 1981, 2:30 pm: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

**Rule 4. Funeral Benefits**

**35 IAC 2-4-1 Death benefits**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-16

Sec. 1. The death benefits under IC 36-8-8-16 for a deceased member's heirs or estate shall be paid by the 1977 Fund from the employer contributions of the city, town, or township where the member was last employed. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-4-1; filed Aug 6, 1980, 9:20 a.m.: 3 IR 1473; filed May 7, 1998, 4:15 p.m.: 21 IR 3328; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

**35 IAC 2-4-2 Survivor benefits; active duty**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-14.1

Sec. 2. (a) For purposes of IC 36-8-8-14.1, a member is on active duty if that member is in employment status with the employer and is not on leave of absence or has not been suspended from his or her duties. However, a member who is on a leave pursuant to the Family and Medical Leave Act of 1993 shall be considered to be on active duty. The 1977 Fund will require a certification from the member's employer with respect to the member's status at the time of death for purposes of determining active duty.

(b) Active duty does not have the same meaning as line of duty, which is defined by IC 36-8-8-14.1(d). (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-4-2; filed May 7, 1998, 4:15 p.m.: 21 IR 3328; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

**35 IAC 2-4-3 Death in service; compliance with the Heroes Earning Assistance and Relief Tax Act of 2008 (HEART)**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-14.1

Sec. 3. (a) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in the retirement system are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(b) Effective with respect to deaths or disabilities occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code), to the extent permitted by Section 414(u)(8) of the Internal Revenue Code, for benefit accrual purposes, the member will be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-4-3; adopted Nov 20, 2009: 20091209-IR-035090927ONA*)

**Rule 5. Disability Benefits**

**35 IAC 2-5-1 Date of disability payments; source of funds**

Authority: IC 36-8-8-5

Affected: IC 36-8-8

Sec. 1. Disability benefits shall begin on the later of an effective date determined by the local board or the date following the exhaustion of all paid leave. The benefits shall be paid on the fifteenth of the month and be payable from the employer's contributions until the member attains his or her earliest retirement age under the fund, at which time the member's contribution account shall be eliminated, just as if the member had then retired. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-1; filed Aug 6, 1980, 9:20 a.m.: 3 IR 1473; filed Aug 6, 1981, 2:30 p.m.: 4 IR 1805; filed May 7, 1998, 4:15 p.m.: 21 IR 3328; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

**35 IAC 2-5-2 Transfer from disability to regular retirement**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-12.4

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Sec. 2. (a) A fund member hired for the first time before January 1, 1990, and who did not file an election under IC 36-8-8-12.4 with the PERF board prior to January 1, 1991, shall continue to receive the same amount of disability benefits when the member is transferred from disability to regular retirement status.

(b) Upon attaining fifty-two (52) years of age, a member receiving Class 1 or Class 2 impairment benefits shall be entitled to receive a retirement benefit equal to the greater of:

(1) the benefit payable to a member with twenty (20) years of service; or

(2) a benefit calculated on the total years of service and salary, as of the year the member attains fifty-two (52) years of age, that the member would have earned had the member remained in active service until attaining fifty-two (52) years of age.

(c) Upon attaining fifty-two (52) years of age, a member receiving Class 3 impairment benefits, who has at least four (4) years of service or who is receiving a Class 3 impairment benefit that equals or exceeds thirty percent (30%) of the monthly salary of a first class police officer or firefighter in the year of the local board's determination of impairment, shall continue to receive the same amount of disability benefits when the member is transferred from disability to regular retirement status.

(d) An eligible member may apply for disability benefits regardless of age. If it is determined that a member of the pre-1990 disability plan has a line-of-duty impairment, or a member of the 1990 disability plan has a class 1 or class 2 impairment, the member will begin receiving a lifetime impairment benefit. If a member of the pre-1990 disability plan has a nonline-of-duty impairment, or a member of the 1990 disability plan has a class 3 impairment, and the member has already attained fifty-two (52) years of age, the member's disability retirement will be immediately converted to a regular retirement. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-2; filed Aug 6, 1981, 2:30 p.m.: 4 IR 1806; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; filed May 7, 1998, 4:15 p.m.: 21 IR 3328; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Nov 19, 2010: 20101208-IR-035100722ONA*)

**35 IAC 2-5-3 Recurring disability benefits**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-12.3; IC 36-8-8-15

Sec. 3. A member who:

(1) has a covered impairment as defined in IC 36-8-8-12.3;

(2) recovers and returns to active service with the department; and

(3) within two (2) years after returning to active service has an impairment that, except for IC 36-8-8-12.3, would be a covered impairment;

is entitled to the benefit described under this section if the impairment described in subdivision (3) results from the same condition or conditions (without an intervening circumstance) that caused the covered impairment described in subdivision (1). The member is entitled to receive the monthly disability benefit amount paid to the member at the time of the member's return to active service plus any adjustments under IC 36-8-8-15 that would have been applicable during the member's period of reemployment. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-3; filed May 7, 1998, 4:15 p.m.: 21 IR 3329; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

**35 IAC 2-5-4 Applicable disability structure; member transfers**

Authority: IC 36-8-8-5

Affected: IC 36-8-4-11; IC 36-8-8

Sec. 4. (a) For purposes of determining which disability benefit provisions apply, the 1977 Fund shall interpret the phrase "hired for the first time" by using the member's first date of employment by the local unit where the member is currently employed. However, in the case of a fund member who directly transfers from covered employment with one (1) local unit to covered employment with another local unit, the fund member's date of employment with the first local unit shall be used.

(b) Members who directly transfer from covered employment with one (1) local unit to covered employment with another local unit shall not be subjected to any additional preexisting conditions or excludable conditions that may be detected at the time of such transfer.

(c) For purposes of this section, "directly transfer" and "directly transfers" means the following:

(1) For those members laid off from employment pursuant to IC 36-8-4-11, a transfer between covered employment with one

(1) local unit to covered employment with a different local unit occurs within the reinstatement period set forth in IC 36-8-4-

11.

(2) For all other members, a transfer between covered employment with one (1) local unit to covered employment with a different local unit occurs within thirty (30) days. Furthermore, "directly transfer" and "directly transfers" shall not include any situation where the member files an application for a refund of his or her contributions from the fund.

*(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-4; filed May 7, 1998, 4:15 p.m.: 21 IR 3329; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Nov 20, 2009: 20091209-IR-035090927ONA; adopted Feb 19, 2010: 20100310-IR-035100124ONA)*

**35 IAC 2-5-5 1977 Police Officers' and Firefighters' Pension and Disability Fund disability procedures**

Authority: IC 36-8-8-5

Affected: IC 4-21.5; IC 36-8-8-12.5; IC 36-8-8-13.5

Sec. 5. (a) The disability application process shall be as described as follows:

(1) The local board shall submit to the state board the following documents:

(A) A completed disability application form that includes the following:

- (i) The member's name, address, and Social Security number.
- (ii) The date of the local board's hearing.
- (iii) The date the local board determined a covered impairment exists.

The local board shall use the applicable forms developed by the state board for this purpose.

(B) The applicable form developed by the state board shall require the following:

- (i) The local board to submit its determinations, including findings of fact, with regard to the existence of a covered impairment and the class of impairment for a fund member who was hired for the first time after December 31, 1989, or who had elected coverage under IC 36-8-8-12.5 and IC 36-8-8-13.5 (Class 1 duty related injury, Class 2 duty related disease, and Class 3 all other covered impairments).
- (ii) A copy of the written job description for the member's position.
- (iii) A statement from the local board that certifies that the member cannot perform the essential functions of the job as reflected on the written job description by identifying the specific functions the member is incapable of performing.
- (iv) A statement from the appointing authority that certifies that there is no suitable and available work in the member's department for which the member is or may be capable of becoming qualified, considering reasonable accommodations to the extent required by the Americans with Disabilities Act.
- (v) The local board's findings with respect to self-inflicted injury, attempted suicide, commission of felony, or preexisting conditions.
- (vi) The local board's determination on whether the impairment resulted from an accidental injury.
- (vii) A statement that certifies that the local board's decision was communicated, in writing, to the fund member and the appointing authority.

(C) A transcript of the local board's hearing. The transcript should be signed by the person doing the transcription and by the pension secretary reflecting that the transcript is a true and accurate report of the testimony and exhibits presented during the local board's hearing.

(D) Copies of all exhibits accepted by the local pension board. These exhibits would include the medical evaluations of the fund member. Tests and examination results must be included.

(E) Certification by the appointing authority or the local board with regard to the fund member's last day of pay (including the last payment for any type and all forms of paid leave).

(F) Certification by the appointing authority of years of service.

(2) Unless the application is complete, the 1977 Fund will not accept the application. If the application is not accepted, the 1977 Fund shall do the following:

(A) Determine whether the file is complete.

(B) Send a letter to the local board stating that either a complete file has been received or the file is incomplete and will not be accepted until the specified items have been received by the 1977 Fund. If the file is incomplete, the 1977 Fund will send a letter stating the file is complete after all previously specified items have been received by the 1977 Fund.

(C) Once a completed file is accepted, the 1977 Fund will give the completed file to the medical authority.

(3) The PERF board or its duly authorized representative will make an initial determination within sixty (60) days from the date the complete application is received by the 1977 Fund unless there is a delay attributable to the fund member or the appointing authority. The initial determination by the PERF board for members who were hired for the first time after December 31, 1989, or who had elected coverage under IC 36-8-8-12.5 and IC 36-8-8-13.5, shall include a determination of class of impairment and degree of impairment. In making this determination, the 1977 Fund shall treat a member as first hired using the member's first date of employment with the local unit where the member is currently employed. However, in the case of a fund member who directly transferred from covered employment with one (1) local unit to covered employment with another local unit, the fund member's date of employment with the first local unit shall be used. If the application is not accepted, the 1977 Fund shall do the following:

(A) The 1977 Fund will not consider the sixty (60) day period to begin until a completed file is accepted.

(B) The initial determination will be mailed, by certified mail return receipt requested, to the member, the local board, and the appointing authority. An appeal of the initial determination must be filed within fifteen (15) days after receiving written notice of the initial determination pursuant to IC 4-21.5.

(C) If the PERF board or its duly authorized representative does not make an initial determination within sixty (60) days and if the delay is not attributable to the fund member or the appointing authority, the local board's determination, or the fund member's statement in the case of an appeal of a local board determination, shall constitute the PERF board's initial determination. A letter confirming this initial determination shall be sent by the 1977 Fund to the local board, the fund member, and the appointing authority.

(D) The letter communicating the PERF board's initial determination shall inform the parties of the time limit on filing objections and shall clearly state that, if no objections are filed, the initial determination shall automatically become the state board's final order.

(4) If no objection to the PERF board's initial determination is filed with the 1977 Fund within fifteen (15) days after the date of the PERF board's initial determination letter, the PERF board's initial determination shall become the PERF board's final order.

(5) If a timely objection to the PERF board's initial determination is filed, the 1977 Fund shall follow an internal hearing procedure. The 1977 Fund shall notify the member if the appeal is not timely. Such notice will indicate that the initial determination automatically became the PERF board's final order.

(6) After receiving a timely objection to the initial determination, the 1977 Fund shall designate a hearing officer to review the case. The hearing officer must make a recommendation to the 1977 Fund with regard to a final decision within sixty (60) days after the hearing. The hearing will be recorded and a transcript prepared.

(7) Based upon the complete record and the recommendation from the hearing officer, the PERF board shall issue a final order. The PERF board may accept, but shall not be required to accept, the hearing officer's recommendation as its final order. The final order will be communicated in a letter, sent certified mail return receipt requested, to the fund member, the local board, and the appointing authority. In addition, the PERF board may do the following:

(A) The PERF board may request or accept additional information before issuing a final determination.

(B) The PERF board shall issue a final order within one hundred eighty (180) days from the date the complete application is received by the 1977 Fund unless there is a delay attributable to the fund member or the appointing authority. If an order is not issued within one hundred eighty (180) days and if the delay is not attributable to the fund member or the appointing authority, the initial determination statements shall constitute the PERF board's final order.

(b) The review of a fund member's impairment may be initiated by the 1977 Fund, the fund member, the safety board, or the local board. The review shall follow the procedure for disability applications. The cost of any medical examination required by the local board shall be paid by the party who petitioned for review.

(c) Requirements for recovered disabilitants shall be as follows:

(1) If there is a final determination that a disabilitant has recovered, the 1977 Fund shall solicit a certification from the local authorities with regard to the existence of suitable and available work on the police or fire department.

(2) Benefits will be terminated if suitable and available work on the police or fire department has been offered to the member. Benefits shall terminate in such a case regardless of the member's decision to accept or reject the employment offer from the police or fire department.

(3) A recovered member returning to the same department will not be treated as a new applicant and will not be subjected to the application process for new members in the fund.

(4) In the event a member recovers from a covered impairment, returns to active service with the police or fire department,

and becomes unable to perform all suitable and available work on the police or fire department within two (2) years of returning to active duty due to a covered impairment that is based on the same condition or conditions for which disability benefits were previously paid to the member, the member shall be entitled to receive monthly disability benefits equal to the amount of the monthly disability benefits that were paid to the member at the time of the member's return to active service plus any applicable cost of living adjustments.

*(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-5; filed May 7, 1998, 4:15 p.m.: 21 IR 3329; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Nov 21, 2008: 20090107-IR-035080955ONA)*

**35 IAC 2-5-5.1 Standard to determine degree of impairment for a covered impairment**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-13.1

Sec. 5.1. To determine the degree of impairment, for a member who has been found to have a covered impairment, the impairment standards contained in the most current edition of the American Medical Association: Guidelines of Disability Ratings in effect at the time the application for disability benefits is filed with the PERF board shall be used to determine the degree of impairment. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-5.1; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Feb 19, 2010: 20100310-IR-035100124ONA)*

**35 IAC 2-5-5.2 1977 police officers' and firefighters' pension and disability fund benefit payments pending appeal**

Authority: IC 36-8-8-5

Affected: IC 4-21.5; IC 34-13-1-6; IC 36-8-8-12.5; IC 36-8-8-13.5

Sec. 5.2. (a) A member who elects to exercise the right to appeal an adverse decision issued by the 1977 police officers' and firefighters' pension and disability fund may receive benefit payments less the disputed amount while the matter is pending. Should the matter be resolved in the member's favor, future benefits will be adjusted accordingly and a lump-sum payment for past benefits due shall be issued within sixty (60) days. If, however, the necessary information has not been provided or was delayed, the sixty (60) day period will be extended accordingly.

(b) Whenever, by final decree or judgment, a sum of money is adjudged to be due to a person, the judgment shall draw an annual rate of interest as described in IC 34-13-1-6. The fund shall not pay prejudgment interest.

(c) When a member appeals an initial determination of disability benefits and the member prevails, the increase is awarded retroactive to the date of the initial determination. No interest on any retroactive disability payments will be owed. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-5.2; adopted Nov 19, 2010: 20101208-IR-035100722ONA)*

**35 IAC 2-5-6 Determination of work within the fund member's department**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-12.3

Sec. 6. In order for the PERF board to make a determination with respect to a fund member's disability, the 1977 Fund must receive a certification from the local safety board that there is no suitable and available work in the member's department for which the fund member is or may be capable of becoming qualified, considering reasonable accommodation to the extent required by the Americans with Disabilities Act. The 1977 Fund will not process an application for disability unless the appropriate certification is included with the application for disability benefits. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-6; filed May 7, 1998, 4:15 p.m.: 21 IR 3331; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

**35 IAC 2-5-7 Line-of-duty review by the 1977 fund advisory committee**

Authority: IC 36-8-8-5

Affected: IC 36-8-8

Sec. 7. After a hearing is conducted by the local board concerning determinations of impairment for fund members who:



- (1) are hired for the first time before January 1, 1990; and
- (2) do not choose coverage by sections IC 36-8-8-12.5 and IC 36-8-8-13.5 under section IC 36-8-8-12.4, pursuant to IC 36-8-8-12.7(r);

the 1977 fund advisory committee shall review the local board's recommendation not later than forty-five (45) days after receiving the recommendation and shall issue an initial determination regarding whether the covered impairment was incurred in the line of duty or not in the line of duty. If the 1977 fund advisory committee fails to issue an initial determination within forty-five (45) days after receiving the recommendation from the local board, the default award on whether the covered impairment was incurred in the line of duty will be the determination made by PERF's medical authority. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-7; adopted Nov 21, 2008: 20090107-IR-035080955ONA*)

### **35 IAC 2-5-8 Withholding of payments**

Authority: IC 36-8-8-5

Affected: IC 4-21.5; IC 36-8-8-12.5; IC 36-8-8-13.5

Sec. 8. Benefit payments may be withheld under any of the following circumstances:

- (1) To offset the overpayment of benefits to a member or beneficiary until the overpayment is repaid to the fund.
- (2) Pending investigation after three (3) consecutive monthly benefit checks have been returned by the United States Postal Service as undeliverable.

(*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-8; adopted Nov 19, 2010: 20101208-IR-035100722ONA*)

### **35 IAC 2-5-9 Administrative orders; proceedings; reviews**

Authority: IC 5-10.3-3-8

Affected: IC 2-3.5-3-4; IC 4-21.5-3-5; IC 4-21.5-3-28; IC 5-10.2; IC 5-10.3-8-5; IC 33-38-6-23; IC 33-39-7-11

Sec. 9. (a) The purpose of this rule is to establish procedures to process petitioner appeals of the 1977 police officers' and firefighters' pension and disability fund staff action, determinations, or decisions referred to as "staff action" in accordance with and pursuant to the Indiana Administrative Orders and Procedures Act (Act), IC 4-21.5-3.

(b) Pursuant to IC 4-21.5-3-28, the executive director (ED) as the board's delegate is the ultimate authority and has set forth the following review process to be followed before a final order is issued:

- (1) The 1977 police officers' and firefighters' pension and disability fund will issue an initial determination of its response to a questioned action.
- (2) The initial determination will be sent by certified mail to the stakeholder with a summary of the member's right to administrative review.
- (3) Pursuant to IC 4-21.5-3-5, the petitioner will have fifteen (15) days from receipt of the 1977 police officers' and firefighters' pension and disability fund's initial determination to appeal in writing.
- (4) Upon receipt by the 1977 police officers' and firefighters' pension and disability fund, a copy of the appeal will be sent to the administrative law judge (ALJ) assigned to the matter.
- (5) The assigned ALJ may set a prehearing conference to discuss issues of discovery and motions for summary judgment and to determine a briefing schedule.
- (6) If an evidentiary hearing is required, the 1977 police officers' and firefighters' pension and disability fund shall provide space which is equipped with a recording device to conduct the hearing or engage a court reporter to make a record of the hearing if necessary.
- (7) Once the ALJ has entered a decision and recommended order, the petitioner will have fifteen (15) days to object to the ALJ's decision.
- (8) The ED will make a final determination to affirm, modify, or dissolve the ALJ's order. The executed final order will be mailed by certified mail to the ALJ and petitioner.
- (9) The petitioner has thirty (30) days from receipt of the final order to petition a court of jurisdiction for judicial review.
- (10) If no petition for judicial review is filed within the thirty (30) day time period, the file is closed.
- (11) This rule shall be interpreted to conform to the Act and shall be implemented pursuant to and in accordance with the Act.

(c) This rule will apply to appeals filed pursuant to IC 5-10.3-8-5, IC 33-39-7-11, IC 33-38-6-23, and IC 2-3.5-3-4. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-9; adopted Nov 19, 2010: 20101208-IR-035100722ONA*)

**Rule 6. Quarterly Reports**

**35 IAC 2-6-1 Quarterly report and payment of contributions**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-4

Sec. 1. Quarterly Reports. A quarterly report containing payments of employer and employee contributions, shall be due in the office of the 1977 Fund no later than the fifteenth (15th) day following the end of each calendar quarter, i.e., January 15, April 15, July 15, and October 15 each year.

Any employer who fails to make such payments by the due date may be assessed a penalty. The penalty will be determined by the Board of Trustees. (*Board of Trustees of the Public Employees' Retirement Fund; filed Aug 6, 1980, 9:20 a.m.: 3 IR 1473; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

**Rule 7. Salary**

**35 IAC 2-7-1 Report of salary levels**

Authority: IC 36-8-8-5

Affected: IC 36-8-1-11; IC 36-8-8-11

Sec. 1. Annually, on or before January first each year, the Clerk-Treasurer or City Controller shall certify to the 1977 Fund within the limits of IC 36-8-1-11 what constitutes the salary of a first class patrolman or firefighter for that employer for that calendar year. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-7-1; filed Aug 6, 1980, 9:20 a.m.: 3 IR 1473; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

**Rule 8. Employer's Contribution**

**35 IAC 2-8-1 Actuarial data used in calculating total membership cost**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-4

Sec. 1. The Actuarial Data to be used in calculating the total membership cost of participants shall include all service as a full time sworn police officer or firefighter in an Indiana police or fire force having a 1977 Police and Firefighters' Pension and Disability Fund. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-8-1; filed Aug 6, 1981, 2:30 pm: 4 IR 1806; filed Sep 8, 1982, 2:05 pm: 5 IR 2111; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

**35 IAC 2-8-2 Interest on employer's account**

Authority: IC 36-8-8-5

Affected: IC 36-8-8-4

Sec. 2. Interest on Employer's Account. Annual interest shall be paid each year, on the prior year-end account balance at a rate determined by the 1977 Fund, on all accounts having a positive year-end balance. All accounts having a negative year-end account balance may be charged an interest rate determined by the 1977 Fund. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-8-2; filed Aug 6, 1981, 2:30 p.m.: 4 IR 1806; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

**Rule 9. Baseline Statewide Medical Examinations and Standards**

**35 IAC 2-9-1 Purpose**

Authority: IC 36-8-8-5; IC 36-8-8-19

Affected: IC 36-8-8-7

Sec. 1. (a) This rule identifies the baseline statewide physical medical standards that are applicable to all applicants who desire to become members of the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). The baseline statewide medical standards are designed to ensure all applicants seeking to become a police officer or firefighter are capable of successfully performing the essential functions of the job without imposing a direct threat to the health or safety of themselves, coworkers, or the public with whom they come in contact during the course of employment.

(b) The requirements in this rule and in 35 IAC 2-10, containing the Class 3 excludable conditions, were based on in-depth consideration of the essential functions of the job for police officers and firefighters.

(c) For firefighters, consideration was also given to the fact that the essential functions are performed in and affected by environmental factors, including the following:

- (1) Operate both as a member of a team and independently at incidents of uncertain duration.
  - (2) Spend extensive time outside exposed to the elements.
  - (3) Experience frequent transition from hot to cold and from humid to dry atmospheres.
  - (4) Tolerate extreme fluctuations in temperature and perform physically demanding work in hot (up to four hundred degrees Fahrenheit (400°F)), humid (up to one hundred percent (100%)) atmospheres while wearing equipment that significantly impairs body cooling mechanisms.
  - (5) Work in wet, icy, or muddy areas.
  - (6) Perform a variety of tasks on slippery, hazardous surfaces, such as on roof tops or from ladders.
  - (7) Work in areas where sustaining traumatic or thermal injury is possible.
  - (8) Face exposure to carcinogenic dusts such as:
    - (A) asbestos; or
    - (B) toxic substances, such as:
      - (i) hydrogen cyanide;
      - (ii) acids;
      - (iii) carbon monoxide; or
      - (iv) organic solvents;either through inhalation or skin contact.
  - (9) Face exposure to infectious agents such as hepatitis B or human immunodeficiency virus (HIV).
  - (10) Perform complex tasks during life-threatening emergencies.
  - (11) Work for long periods of time, requiring sustained physical activity and intense concentration.
  - (12) Face life or death decisions during emergency conditions.
  - (13) Tolerate exposure to grotesque sights and smells associated with major trauma and burn victims.
  - (14) Make rapid transitions from rest to near maximal exertion without warm-up periods.
  - (15) Operate in environments:
    - (A) of high noise;
    - (B) of poor visibility;
    - (C) of limited mobility;
    - (D) at heights; and
    - (E) in enclosed or confined spaces.
  - (16) Use manual or power tools in the performance of duties.
  - (17) Rely on senses of sight, hearing, smell, and touch to help determine the nature of the emergency, maintain personal safety, and make critical decisions in confused, chaotic, and potentially life-threatening environments.
  - (18) Wear personal protective equipment that weighs approximately fifty (50) pounds while performing the essential functions of the job.
  - (19) Perform physically demanding work while wearing positive pressure breathing equipment with one and five-tenths (1.5) inches water column resistance to exhalation at a flow of forty (40) liters per minute.
  - (20) Be able to communicate with people effectively.
- (d) For police officers, consideration was also given to the fact that the essential job functions are performed in and affected

by environmental factors, including the following:

- (1) Operate both as a member of a team and independently at incidents of uncertain duration.
- (2) Face exposure to infectious agents such as hepatitis B or human immunodeficiency virus (HIV).
- (3) Perform complex tasks during life-threatening emergencies.
- (4) Work for long periods of time, requiring sustained physical activity and intense concentration.
- (5) Face life or death decisions during emergency conditions.
- (6) Tolerate exposure to grotesque sights and smells associated with major trauma.
- (7) Make rapid transitions from rest to near maximal exertion without warm-up periods.
- (8) Use firearms, self-defense equipment, and body armor.
- (9) Be able to physically protect himself or herself.
- (10) Be able to communicate with people effectively.

*(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-9-1; filed May 27, 1993, 12:00 p.m.: 16 IR 2338, eff Jul 1, 1993; filed May 7, 1998, 4:15 p.m.: 21 IR 3331; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

### **35 IAC 2-9-2 Definitions**

Authority: IC 36-8-8-5; IC 36-8-8-19  
Affected: IC 36-8-3.2

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and all applicable regulations and amendments, if any, related to the Americans with Disabilities Act.

(c) "Candidate" means an individual who has successfully passed the physical agility test and, if applicable, the general aptitude test under IC 36-8-3.2-3 or IC 36-8-3.2-3.5 and received an offer of employment that is subject to the individual's successful completion of the physical and mental examinations identified in IC 36-8-3.2-6 and IC 36-8-8-19. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-9-2; filed May 27, 1993, 12:00 p.m.: 16 IR 2339, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

### **35 IAC 2-9-3 Administration of rule**

Authority: IC 36-8-8-5; IC 36-8-8-19  
Affected: IC 36-8-8-19

Sec. 3. Notwithstanding any other provision, this rule shall be administered in a manner that is consistent with the Americans with Disabilities Act, to the extent required by the Americans with Disabilities Act. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-9-3; filed May 27, 1993, 12:00 p.m.: 16 IR 2339, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

### **35 IAC 2-9-4 Components of examinations**

Authority: IC 36-8-8-5; IC 36-8-8-19  
Affected: IC 36-8-8-7

Sec. 4. (a) The first component of the baseline statewide physical examination consists of a comprehensive general medical history. The comprehensive general medical history shall cover the applicant's known health problems, such as major illnesses, surgeries, medication use, and allergies. Symptom review is also important for detecting early signs of disqualifying conditions and excludable conditions. The comprehensive general medical history shall include the following:

- (1) A personal health history.
- (2) A family health history.
- (3) An immunization history.
- (4) A reproductive history.

An occupational history shall also be completed to collect information about the person's past occupational and environmental exposures.

(b) After the examining physician completes the comprehensive medical history, the physician shall conduct a general physical examination of the candidate. Requirements for the baseline statewide physical examination shall be as follows:

(1) The baseline statewide physical examination is intended to test the following organ systems:

- (A) Dermatological system.
- (B) Ears, eyes, nose, mouth, and throat.
- (C) Cardiovascular system.
- (D) Respiratory system.
- (E) Gastrointestinal system.
- (F) Genitourinary system.
- (G) Endocrine and metabolic systems.
- (H) Musculoskeletal system.

(2) The baseline statewide physical examination shall include the following tests:

- (A) Vital signs, such as pulse, respiration, blood pressure, and, if indicated, temperature.
- (B) Visual testing, using a Snellen chart or other comparable chart. Vision testing shall also include field of vision testing and color vision testing.
- (C) Audiometric testing. (An audiogram should be performed in a soundproof booth pursuant to the American National Standards Institute (ANSI) standard S3.1-1991 with equipment calibrated to ANSI standard S3.6-1989). If a booth is unavailable, the test room sound pressure levels should not exceed those specified in 29 CFR 1910.95 (July 1, 1992 edition).
- (D) Pulmonary function testing. Only a spirogram that is technically acceptable and demonstrates the best efforts by an individual should be used to calculate the forced vital capacity (FVC) and forced expiratory volume in one (1) second (FEV1).
- (E) Quantiferon test (TB blood test).
- (F) Laboratory testing must include the following:
  - (i) Baseline blood testing, including complete blood count (CBC) and HIV testing.
  - (ii) Biochemical test battery (SMA), including, at a minimum, liver function tests (bilirubin, direct & indirect, SGOT, SGPT, GGT), fasting blood glucose, electrolytes, BUN, creatinine, fasting serum lipids, and test for syphilis.
  - (iii) Routine urinalysis to detect specific illnesses.
  - (iv) Drug abuse testing.
  - (v) Alcohol abuse testing, if indicated.

Additional laboratory testing should be conducted as indicated.

- (G) Chest x-ray. Posterior-anterior (PA) and lateral views required; spine x-rays and other diagnostic imaging, if indicated.
- (H) Twelve (12) lead electrocardiogram (resting) test.
- (I) Treadmill cardiac stress test.
- (J) Each candidate must complete a respirator clearance questionnaire.
- (K) Submax (Bruce protocol) treadmill evaluation.
- (L) Functional movement screening or orthopedic screening, or both.

(c) The local board shall determine the standards for passage of the baseline statewide mental examination. The local board may designate a community health center, a hospital, a licensed physician, or a licensed psychologist to administer the baseline statewide mental examination required under IC 36-8-8-7 and IC 36-8-8-19. The examining physician must have no pre-existing personal relationship with the applicant. The baseline mental examination shall consist of the Minnesota Multiphasic Personality Inventory II. The results of the baseline statewide mental examination shall be interpreted by a licensed physician or a licensed psychologist. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-9-4; filed May 27, 1993, 12:00 p.m.: 16 IR 2339, eff Jul 1, 1993; filed May 7, 1998, 4:15 p.m.: 21 IR 3332; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Feb 19, 2010: 20100310-IR-035100124ONA*)

**35 IAC 2-9-5 Local determination and transfer to PERF**

Authority: IC 36-8-8-5

Affected: IC 36-8-3.2-3; IC 36-8-3.2-3.5; IC 36-8-8-7; IC 36-8-8-19

Sec. 5. (a) The examining physician shall send the results of the comprehensive general medical history and physical examination to the local board.

(b) Once the local board determines that the candidate satisfies any physical and mental standards established by the appointing authority or the local board, the baseline statewide physical examination, and the baseline statewide mental examination, the local board shall send PERF the following:

(1) Copies and certification of the results of the general medical history and baseline statewide physical examination required under IC 36-8-8-7 and IC 36-8-8-19.

(2) Certification of the results of the physical agility examination required under IC 36-8-3.2-3 or IC 36-8-3.2-3.5.

(3) Certification of the results of the baseline statewide mental examination required under IC 36-8-8-7 and IC 36-8-8-19.

*(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-9-5; filed May 27, 1993, 12:00 p.m.: 16 IR 2340, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

**35 IAC 2-9-6 PERF determinations and disqualifying conditions**

Authority: IC 36-8-8-5; IC 36-8-8-19

Affected: IC 36-8-3.5-12

Sec. 6. (a) As determined by the PERF board or the PERF board's designee, based on the results of the general medical history and the physical examination of the candidate, the existence of any of the conditions identified in subsection (b) will result in the revocation of the candidate's conditional offer of employment unless the conditions can be eliminated or effectively reduced by reasonable accommodations to the extent required under the Americans with Disabilities Act as determined by the appointing authority and certified to PERF.

(b) The following are disqualifying conditions:

(1) Vision testing as follows:

(A) Any of the following tests for far vision acuity:

(i) Binocular vision not correctable to at least 20/30.

(ii) Vision of the worse eye not correctable to at least 20/50.

(iii) Uncorrected binocular vision of worse than 20/100, with the exception that long term successful users of soft contact lenses do not have to meet this uncorrected standard.

(B) Color vision. An inability to identify red, green, and yellow colors.

(C) Peripheral vision. Uncorrected field of vision of worse than one hundred forty (140) degrees in the horizontal meridian in each eye.

(2) Hearing deficit. A hearing deficit in the pure tone thresholds (five hundred (500) hertz, one thousand (1,000) hertz, two thousand (2,000) hertz, and three thousand (3,000) hertz) in the unaided worse ear:

(A) of more than twenty-five (25) decibels in three (3) of the four (4) frequencies;

(B) of more than thirty (30) decibels in any one (1) of the first three (3) frequencies; or

(C) an average loss within the four (4) frequencies of more than thirty (30) decibels.

(3) Communicable diseases. Any communicable disease or condition that poses a significant risk of substantial harm to the health or safety of the candidate, coworkers, or members of the public with whom the candidate will come in contact during the course of employment.

(4) Suddenly incapacitating diseases or conditions. Any disease or condition (physical or mental) that could incapacitate the candidate without sufficient warning to allow the candidate to take preventive measures, thereby imposing a significant risk of substantial harm to the health or safety of the candidate, coworkers, or members of the public with whom the candidate will come in contact during the course of employment (unless such disease or condition can be controlled by medication and the candidate affirms he or she takes the appropriate medication).

(5) Alcoholism or illegal use of drugs as follows:

(A) Any history of alcoholism, unless the candidate has successfully rehabilitated for a period of at least one (1) year, successfully passes an examination for alcohol usage, and the candidate affirms he or she is no longer engaging in the use of alcohol and has successfully rehabilitated for a period of at least one (1) year preceding his or her application for employment.

(B) Any history of illegal use of drugs or evidence of drug abuse, unless the candidate has successfully rehabilitated for a period of at least one (1) year, successfully passes an examination for use of drugs or drug abuse, and the candidate

affirms he or she is no longer engaging in drug abuse and has successfully rehabilitated for a period of at least one (1) year preceding his or her application for employment.

(c) The determination of whether a candidate's condition poses a significant risk of substantial harm will be based on an objective individualized assessment of the applicant's present ability to safely perform the essential functions of the job considering reasonable accommodations to the extent required under the Americans with Disabilities Act. Factors to be considered include the following:

- (1) The duration of the risk.
- (2) The nature and severity of the potential harm.
- (3) The likelihood that the potential harm will occur.
- (4) The imminence of the potential harm.

Relevant evidence may include input from the applicant, the experience of the applicant in previous similar positions, opinions of medical doctors, rehabilitation counselors, or physical therapists who have expertise in the disability involved, or direct knowledge of the applicant. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-9-6; filed May 27, 1993, 12:00 p.m.: 16 IR 2340, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

## **Rule 10. Preexisting Excludable Medical Conditions**

### **35 IAC 2-10-1 Purpose**

Authority: IC 36-8-8-5; IC 36-8-8-13.6  
Affected: IC 36-8-8-13.5

Sec. 1. (a) This rule identifies the Class 3 preexisting excludable conditions which, under IC 36-8-8-13.5 and IC 36-8-8-13.6, make members of the 1977 Police Officers' and Firefighters' Pension and Disability Fund (Fund) ineligible under certain circumstances for the Class 3 impairment benefits established in IC 36-8-8-13.5(e).

(b) The purpose of this rule is to permit the continued development and administration of the Fund in accordance with accepted principles of risk assessment. This rule is designed to protect the fiscal integrity of the Fund by identifying certain preexisting conditions that have a substantial likelihood of causing impairments that would result in a member of the Fund becoming eligible for Class 3 impairment benefits. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-10-1; filed May 27, 1993, 12:00 p.m.: 16 IR 2341, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

### **35 IAC 2-10-2 Preexisting excludable medical conditions**

Authority: IC 36-8-8-5; IC 36-8-8-13.6  
Affected: IC 36-8-8-13.5

Sec. 2. (a) As determined by the PERF board or the PERF board's designee and based on the results of the general medical history and the physical examination of the candidate, the preexisting conditions identified in subsection (b) will result in the candidate being ineligible under certain circumstances for the Class 3 impairment benefits established in IC 36-8-8-13.5(e).

(b) Each of the following preexisting conditions constitutes an excludable condition under IC 36-8-8-13.5 and IC 36-8-8-13.6:

- (1) A history of myocardial infarction.
- (2) Angina pectoris or other evidence of coronary artery disease.
- (3) Congenital heart disease.
- (4) Hypertrophy or dilation of the heart as evidenced by examination.
- (5) Pericarditis, endocarditis, or myocarditis unless the examining physician determines that the condition is now stable and unlikely to recur.
- (6) Arrhythmias.
- (7) Diabetes. A candidate with a history of hyperglycemia or glucosuria or albuminuria must be considered to have an excludable condition unless a report from the physician that treated the candidate can be obtained which assures the absence of diabetes mellitus.
- (8) Pancreatitis.
- (9) A history of a chronic bowel disorder such as Crohn's disease and ulcerative colitis. A candidate with a history of a bowel

obstruction within the preceding ten (10) years shall be considered to have an excludable condition unless the candidate is able to obtain a letter from the treating physician to the examining physician explaining the nature of the obstruction and what was done to cure it.

- (10) Any hepatitis, chronic or acute, with impairment of liver function.
- (11) Cirrhosis or varices.
- (12) Inguinal or femoral hernia, hiatal hernia, if symptomatic, or ventral hernia, if symptomatic.
- (13) Interabdominal tumor or mass.
- (14) Any previous gastric resection unless there is sound x-ray evidence provided that there is little chance of recurrence of the condition which caused the first surgery.
- (15) Active gastric or duodenal ulcer unless the candidate is able to provide x-ray evidence that the ulcer is currently healed. A history of a gastric or duodenal ulcer shall be treated the same as any such active ulcer unless the candidate is able to provide x-ray evidence that the ulcer is currently healed.
- (16) Any evidence of rectal or prostatic malignancy.
- (17) Evidence of existing renal calculus or ureterovesical calculus, if symptomatic.
- (18) A person who has had a nephrectomy but with a functional remaining kidney will not be considered to have an excludable condition, provided there is no evidence of reduced renal function in the remaining kidney.
- (19) Any chronic nephritis or nephrosis, hydronephrosis, pyelonephrosis, pyelitis, pyelonephritis, or polycystic disease of the kidneys.
- (20) Urinary tract disease, whether or not the urinary tract has any significant abnormalities at this time, or whether any organic disease is present, or other related disorders adversely affecting the kidneys, excluding urinary tract infections.
- (21) A history of kidney stones. If there is a history of kidney stones, urological consultation must be sought in order to provide an estimate of the likelihood of the recurrence of long term incapacitating symptoms. A candidate exhibiting a high likelihood of recurrence must be considered to have an excludable condition.
- (22) Any proteinuria which is a result of renal disease.
- (23) Any malformation of the urinary tract organs, congenital or acquired.
- (24) Polycystic kidney.
- (25) Any current fistula, either congenital or acquired, including tracheostomy.
- (26) Any history of subarachnoid hemorrhage, cerebral aneurysm, or any cerebral vascular disease including any previous stroke within the preceding ten (10) years.
- (27) Hydrocephalus.
- (28) Abnormalities from recent head injury, such as severe cerebral concussion or contusion.
- (29) Any acute or chronic pathological condition in either eye or the adnexa of the eye.
- (30) Nystagmus of the eye, uncorrected strabismus, glaucoma, and aphakia, whether it is unilateral or bilateral, and active chorioretinitis should be considered for further examination by a qualified eye specialist to determine the likelihood and degree of future impairment.
- (31) Cataract, retinitis pigmentosa, and any papilledema or tumor.
- (32) Any retinal exudate, hemorrhage or edema, or detachment of the retina.
- (33) Inflammatory disease of the retina, the globe, or the other structures within the globe.
- (34) Heterophoria, hyperphoria, esophoria, or exophoria should be considered for further examination by a qualified eye specialist to determine the likelihood and degree of future impairment.
- (35) Bronchiectasis.
- (36) Bronchial asthma.
- (37) Emphysema or chronic obstructive pulmonary disease.
- (38) Pulmonary fibrosis.
- (39) Pleurisy with effusion or empyema.
- (40) Any spontaneous pneumothorax unless the examining physician determines that the condition is not likely to persist or recur.
- (41) Any evidence or history of tuberculosis, sarcoidosis, or congenital cystic disease of the lung, active histoplasmosis, or any other lung pathology unless the examining physician determines that the condition is now stable and unlikely to recur.
- (42) Tumor or cyst of the lung, pleura, or mediastinal.
- (43) Any disease of the blood forming organs or of the blood.



- (44) Anemia with the hemoglobin lower than twelve (12) grams per hundred cubic centimeters.
  - (45) Polycythemia, leukemia, or any other progressive diseases of the blood system.
  - (46) Hemophilia or other bleeding disorder.
  - (47) High blood pressure, evidenced by any of the following:
    - (A) Any blood pressure reading above one hundred fifty (150) millimeters mercury (for systolic).
    - (B) Any blood pressure reading above ninety (90) millimeters mercury (for diastolic).
    - (C) Use of antihypertensive medication.
- However, if systolic and diastolic readings without medication are produced at levels lower than one hundred fifty (150) millimeters mercury (for systolic) and ninety (90) millimeters mercury (for diastolic) on three (3) consecutive days, high blood pressure shall not be an excludable condition.
- (48) If peripheral edema is present, the cause shall be determined and the disqualifying disorder identified.
  - (49) Aneurysm and arteriovenous malformation.
  - (50) Any active disease of bones and joints, including active arthritis, osteomyelitis, or marked deformity of the spinal column, including, but not limited to, the following:
    - (A) History of laminectomy.
    - (B) Amputation or deformity of a joint or limb.
    - (C) Joint reconstruction.
    - (D) Ligamentous instability.
    - (E) Joint replacement.
  - (51) Herniation of an intervertebral disk.
  - (52) Neurofibromatosis.
  - (53) Neuropathy or neuralgia, including sciatica.
  - (54) Recurrent syncope.
  - (55) Any seizure disorder within the preceding ten (10) years.
  - (56) Parkinsonian syndrome (includes Parkinson's disease).
  - (57) Huntington's disease (chorea).
  - (58) Ankylosing rheumatoid spondylitis.
  - (59) Malignant melanoma or, if it had been removed, any evidence of metastatic disease.
  - (60) Hodgkin's disease, lymphadenopathy, lymphomas, or lymphosarcomas.
  - (61) Addison's disease, splenomegaly, or adenopathy secondary to systemic disease or metastasis.
  - (62) Disease of the adrenal gland, pituitary gland, parathyroid gland, or thyroid gland of clinical significance.
  - (63) Nutritional deficiency disease or metabolic disorder.
  - (64) Any malignant tumor of any type unless completely eradicated for at least ten (10) years.
  - (65) Alcohol or drug abuse within five (5) years.
  - (66) Anorexia nervosa or bulimia within three (3) years.
  - (67) Auto immune disorders, including, but not limited to, the following:
    - (A) Rheumatoid arthritis and myasthenia gravis.
    - (B) Dermatomyositis.
    - (C) Scleroderma.
  - (68) Lupus erythematosus.
  - (69) Multiple sclerosis.
  - (70) Amyotrophic lateral sclerosis (Lou Gehrig's disease).
  - (71) Muscular dystrophy.
  - (72) Obesity of such a degree so as to interfere with normal activities, including respiration.
  - (73) Peripheral atherosclerosis or arteriosclerosis, including any of the following peripheral vascular diseases:
    - (A) Intermittent claudication.
    - (B) Buerger's disease.
    - (C) A phenomenon of repeated thrombophlebitis.
  - (74) Acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) positive, as determined by a blood test.
  - (75) Sexually transmitted diseases should be considered for further examination by a qualified medical specialist to determine

the likelihood and degree of future impairment.

- (76) Narcolepsy or hypersomnolence due to any cause.
- (77) Heart bypass surgery within the preceding ten (10) years.
- (78) Primary pulmonary hypertension.
- (79) Organ transplant.
- (80) Pacemaker implant.
- (81) Sleep apnea syndrome.
- (82) Anxiety disorder.
- (83) Panic disorder.
- (84) Obsessive compulsive disorder.
- (85) Post-traumatic stress disorder.
- (86) Attention deficit/hyperactivity disorder.
- (87) Tourette syndrome.
- (88) Depressive disorder.
- (89) Bipolar disorder.
- (90) Personality disorder.
- (91) Substance abuse disorder.
- (92) Schizophrenia and other psychotic disorders.
- (93) Anorexia nervosa.
- (94) Miscellaneous or other significant psychiatric disorder.
- (95) Any disqualifying condition under 35 IAC 2-9-6 that has been accommodated by the local appointing authority.
- (96) Any other significant disease/disorder.

*(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-10-2; filed May 27, 1993, 12:00 p.m.: 16 IR 2341, eff Jul 1, 1993; filed Mar 3, 2000, 7:45 a.m.: 23 IR 1606; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Feb 19, 2010: 20100310-IR-035100124ONA; adopted Nov 19, 2010: 20101208-IR-035100722ONA)*

**35 IAC 2-10-3 Statement of understanding**

Authority: IC 36-8-8-5

Affected: IC 36-8-3.5-12; IC 36-8-8-13.5; IC 36-8-8-13.6

Sec. 3. An application for membership in the 1977 Police Officers' and Firefighters' Pension and Disability Fund must include a statement of understanding signed by the candidate. This statement must be presented to and signed by the candidate when a conditional offer of employment is extended. The statement must include an explanation of the effect of this rule and a provision affirming that the candidate understands the effect this rule may have on his or her eligibility for Class 3 impairment benefits. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-10-3; filed May 27, 1993, 12:00 p.m.: 16 IR 2343, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

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