

ARTICLE 82-07 DISABILITY BENEFITS

Chapter	
82-07-01	Disability Retirement Eligibility
82-07-02	Right to Formal Hearing and Appeal [Repealed]
82-07-03	Forms of Disability Benefits
82-07-04	Suspension of Disability Benefits

CHAPTER 82-07-01 DISABILITY RETIREMENT ELIGIBILITY

Section	
82-07-01-01	Definitions
82-07-01-02	Disability Retirement Eligibility
82-07-01-03	Determination of Disability - Procedures

82-07-01-01. Definitions.

The following definitions govern the determination of disability benefits under the fund:

1. "Medical examination" means an examination conducted by a licensed medical doctor or a psychologist that includes a diagnosis of the disability, the treatment being provided for the disability, the prognosis and classification of the disability, and a statement indicating how the disability prevents the individual from performing the duties of a teacher.
2. "Permanent disability" means a condition of "total disability" that is static or deteriorating and the prognosis does not indicate an anticipated recovery from the disability.
3. "Temporary disability" means a condition of "total disability" that is expected to last at least twelve months, but is not considered permanent.
4. "Total disability" means any medically determinable physical or mental impairment that is expected to last for a continuous period of not less than twelve months and results in the individual's inability to perform the duties of a teacher. "Total disability" includes conditions of "temporary disability" and "permanent disability" as defined in this section.

History: Effective September 1, 1990; amended effective May 1, 1998; July 1, 2008.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18

82-07-01-02. (Effective through June 30, 2013) Disability retirement eligibility.

A member, with at least one year of service credit, who has a "total disability" is eligible for disability retirement benefits if the member became totally disabled while employed as a teacher and otherwise complies with the requirements of article 82-07.

(Effective after June 30, 2013) Disability retirement eligibility. A member, with at least five years of service credit, who has a "total disability" is eligible for disability retirement benefits if the member became totally disabled while employed as a teacher and otherwise complies with the requirements of article 82-07.

History: Effective September 1, 1990; amended effective May 1, 1998; July 1, 2012.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18

82-07-01-03. Determination of disability - Procedures.

The following procedures govern the determination of disability benefits under the fund:

1. Application process.

- a. Application for disability benefits must be made within thirty-six months from the last date of covered employment on the form provided by the fund. On a case-by-case basis, the board may extend the thirty-six month period.
- b. If the fund member is unable or unwilling to file an application, the member's employer or legal representative may file the member's disability application.
- c. The application must describe the disability, explain the cause of the disability, the limitations caused by the disability, the treatment being followed, the efforts by the employer and the member to implement reasonable accommodations, and the effect of the disability on the individual's ability to perform as a teacher.
- d. Applicants shall be provided information on potential services offered by the office of vocational rehabilitation.
- e. The employer's statement of disability must provide information about the member's sick leave benefits, explain how the disability affects the performance of the teaching duties, include a detailed listing of job duties, and describe efforts to provide reasonable accommodation for the member.

2. Medical examination process.

- a. The applicant for disability retirement must provide the fund with medical examination reports.
- b. An initial medical examination should be completed by the member's attending or family physician on the medical examination form provided by the fund. If deemed necessary by the fund's medical consultant, an additional examination must be completed by a specialist in the disability involved. Available medical or hospital reports may be accepted in lieu of a medical examination report if deemed acceptable by the fund's medical consultant.
- c. The fund is not liable for any costs incurred by the applicant in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports.
- d. A medical examination report is not necessary if the applicant provides written proof documenting eligibility for disability benefits under the Social Security Act. In such cases, the applicant is eligible for disability benefits under North Dakota Century Code section 15-39.1-18 without submitting further medical information to the fund but is subject to recertification requirements specified in this chapter.

3. Medical consultant review.

- a. The fund shall retain a medical doctor to act as its consultant and evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant shall advise the board regarding the medical diagnosis and whether the condition is a "total disability".

4. **Decision.**

- a. The board shall consider applications for disability retirement at regularly scheduled board meetings. The discussion concerning disability applications must be confidential and closed to the general public.
- b. The applicant must be notified of the time and date of the meeting and may attend or be represented.
- c. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the medical consultant's conclusions and recommendations.
- d. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed.
- e. The executive director may make an interim determination concerning eligibility for disability retirement benefits when the medical consultant's report verifies that a total disability exists. However, the board must review the interim determination and make a final determination at its next regularly scheduled board meeting unless additional evidence or information is needed.
- f. The applicant shall be notified in writing of the decision.
- g. If the applicant is determined to be eligible for disability benefits, the disability annuity is payable on, or retroactive to, the first day of the month following the member's last day of paid employment.
- h. If the applicant is determined not to be eligible for disability benefits, the executive director shall advise the applicant of the appeal procedure.

5. **Redetermination and recertification.**

- a. A disabled annuitant is subject to redetermination and recertification to maintain eligibility. The schedule for redetermination and recertification must be as follows:
 - (1) Temporary disability. On July first, following the first anniversary date of disability retirement, and every two years thereafter (unless normal retirement is reached). No further recertification is required after the fourth recertification of temporary disability has been filed and accepted. Basis recovery will begin when the member reaches normal retirement age.
 - (2) Permanent disability. On July first, following the second anniversary date of disability retirement, and five years thereafter unless normal retirement is reached. No further recertification is required after the second recertification of permanent disability has been filed and accepted. Basis recovery will begin when the member reaches normal retirement age.
- b. The fund may require additional recertifications, or waive the necessity for a recertification, if the facts warrant this action.

When a member who is drawing disability benefits is also eligible for normal retirement benefits at the time disability benefits commence, recertification will cease according to the following schedule:

Before age 60

Age 65

At or after age 60, before age 65	5 years
At or after age 65, before age 69	Age 70
At or after age 69	1 year

Basis recovery will also begin according to the above schedule.

- c. The fund will send a recertification form to the disabled annuitant to be completed and sent back to the fund.
- d. The fund may require the disabled annuitant to be reexamined by a doctor at the annuitant's own expense. The submission of medical reports by the member, and the review of those reports by the fund's medical consultant, may satisfy the reexamination requirement.
- e. The executive director must make the redetermination and recertification decision and bring the matter to the board only if warranted. The disability annuitant may appeal an adverse recertification decision to the board in the same manner as the initial determination.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective September 1, 1990; amended effective April 1, 1994; May 1, 1998; May 1, 2000; July 1, 2012.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18