Chapter 182-16 WAC
PRACTICE AND PROCEDURE

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

182-16-034 How can a PEBB enrollee appeal a decision regarding the administration of a PEBB medical plan, insured dental plan, life insurance, long-term care insurance, long-term disability insurance, or property or casualty insurance? [Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-16-034, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-16-034, filed 10/1/08, effective 1/1/09.] Repealed by WSR 10-20-147 (Order 10-02), filed 10/6/10, effective 1/1/11. Statutory Authority: RCW 41.05.160.
182-16-037 How can an enrollee appeal a decision by the agency's self-insured dental plan? [Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-16-037, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-16-037, filed 10/1/08, effective 1/1/09.] Repealed by WSR 10-20-147 (Order 10-02), filed 10/6/10, effective 1/1/11. Statutory Authority: RCW 41.05.160.
182-16-060 Index of significant decisions. [Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-16-060, filed 9/25/12, effective 11/1/12.] Repealed by WSR 14-20-058 (PEBB Admin 2014-02), filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4.

WAC 182-16-010 Appeals—Purpose and scope. (1) For WAC 182-16-025 through 182-16-040, the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the authority in public employees benefits board (PEBB) benefits related proceedings. The model rules of procedure may be found in chapter 10-08 WAC. Other procedural rules adopted in chapters 182-08, 182-12, and 182-16 WAC are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in WAC 182-16-025 through 182-16-040, the procedural rules adopted shall govern.

(2) WAC 182-16-050 through 182-16-110 describes the general rules and procedures that apply to an administrative hearing, requested under WAC 182-16-050, of a PEBB appeal committee decision.

(a) WAC 182-16-050 through 182-16-110 supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules of procedure in chapter 10-08 WAC. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended are adopted for use in a hearing. In the case of a conflict between the model rules of procedure and the rules adopted in WAC 182-16-050 through 182-16-110, the rules adopted in WAC 182-16-050 through 182-16-110 shall prevail.

(b) If there is a conflict between WAC 182-16-050 through 182-16-110 and specific PEBB program rules, the specific PEBB program rules prevail. PEBB program rules are found in chapters 182-08, 182-12, and 182-16 WAC.

(c) Nothing in WAC 182-16-050 through 182-16-110 is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if a hearing right exists, including the APA and program rules or laws.

(d) The hearing rules for the PEBB program in WAC 182-16-050 through 182-16-110 do not apply to any other health care authority program.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-010, filed 9/25/14, effective 1/1/15.

Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-16-010, filed 9/25/12, effective 11/1/12; WSR 08-20-128 (Order 08-03), § 182-16-010, filed 10/1/08, effective 1/1/09. Statutory Authority: RCW 41.05.010 and 34.05.250. WSR 91-14-025, § 182-16-010, filed 6/25/91, effective 7/26/91.]

WAC 182-16-020 Definitions. As used in this chapter the term:

"Authority" or "HCA" means the health care authority.

"Business days" means all days except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Continuance" means a change in the date or time of a hearing.

"Denial" or "denial notice" means an action by, or communication from, either an employing agency, or the PEBB program that aggrieves an employee, or his or her dependent, with regard to PEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, e-mails, electronic files, or other printed or written items.

"Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

"Employer-based group medical insurance" means group medical insurance coverage related to a current employment relationship. It does not include medical insurance coverage available to retired employees, individual market medical insurance coverage, or government-sponsored programs such as medicare or medicaid.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, educational service districts, and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Final order" means an order that is the final PEBB program decision.

"Health plan" means a plan offering medical or dental, or both, developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing" means a proceeding before a presiding officer that gives a party an opportunity to be heard in a dispute about a decision made by the PEBB appeals committee, including prehearing conferences, dispositive motion hearings, status conferences, and evidentiary hearings.

"Hearing representative" means a person who is authorized to represent the PEBB program in an administrative hearing. The person may be an assistant attorney general, a licensed attorney, or authorized HCA employee.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability (LTD)

insurance, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Mail" or "mailing" means placing a document in the United States Postal system, commercial delivery service, or Washington state consolidated mail services properly addressed.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired and disabled employees (as described in WAC 182-12-171), eligible dependents (as described in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.-011.

"Prehearing conference" means a proceeding scheduled and conducted by a presiding officer to address issues in preparation for a hearing.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or registered domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

• Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and

• The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Presiding officer" means an impartial decision maker who is an attorney, presides at an administrative hearing, and is either a director designated HCA employee or an administrative law judge employed by the office of administrative hearings.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Administration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

[Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-16-020, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-020, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-16-020, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-16-020, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-16-020, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-16-020, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-16-020, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-16-020, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-16-020, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.010 and 34.05.250. WSR 91-14-025, § 182-16-020, filed 6/25/91, effective 7/26/91.]

WAC 182-16-025 Where do members appeal decisions regarding eligibility, enrollment, premium payments, premium surcharges, a public employees benefits board (PEBB) wellness incentive, or the administration of benefits? (1) Any employee of a state agency or his or her dependent aggrieved by a decision made by the employing state agency with regard to public employees benefits board (PEBB) eligibility, enrollment, or premium surcharge may appeal that decision to the employing state agency by the process outlined in WAC 182-16-030.

Note: Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to insurance coverage, as described in public employees benefits board (PEBB) rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(2) Any employee of an employer group or his or her dependent who is aggrieved by a decision made by an employer group with regard to PEBB eligibility, enrollment, or premium surcharge may appeal that decision to the employer group through the process established by the employer group.

Exception: Any employee of an employer group aggrieved by a decision regarding life insurance, LTD insurance, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive may appeal that decision to the PEBB appeals committee by the process described in WAC 182-16-032.

(3) Any subscriber or dependent aggrieved by a decision made by the PEBB program with regard to PEBB eligibility, enrollment, premium payments, premium surcharge, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive, may appeal that decision to the PEBB appeals committee by the process described in WAC 182-16-032.

(4) Any PEBB enrollee aggrieved by a decision regarding the administration of a PEBB medical plan, self-insured dental plan, insured dental plan, life insurance or LTD insurance may appeal that decision by following the appeal provisions of those plans, with the exception of eligibility, enrollment, and premium payment determinations.

(5) Any PEBB enrollee aggrieved by a decision regarding the administration of PEBB long-term care insurance or property and casualty insurance may appeal that decision by following the appeal provisions of those plans.

(6) Any PEBB employee aggrieved by a decision regarding the administration of a benefit offered under the state's salary reduction plan may appeal that decision by the process described in WAC 182-16-036.

(7) Any subscriber aggrieved by a decision made by the third-party administrator contracted to administer the PEBB wellness incentive program regarding the completion of the PEBB wellness incentive program requirements, or a request for a reasonable alternative to a wellness incentive program requirement, may appeal that decision by the process described in WAC 182-16-035.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-025, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-16-025, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-16-025, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-16-025, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-16-025, filed 10/6/10, effective 1/1/11.]

WAC 182-16-030 How can an employee or an employee's dependent appeal a decision made by a state agency about eligibility, premium surcharge, or enrollment in benefits? (1) An eligibility, premium surcharge, or enrollment decision made by an employing state agency may be appealed by submitting a written request for review to the employing state agency. The employing state agency must receive the request for review no later than thirty days after the date of the initial denial notice. The contents of the request for review are to be provided in accordance with WAC 182-16-040.

(a) Upon receiving the request for review, the employing state agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the employing state agency may hold a formal meeting or hearing, but is not required to do so.

(b) The employing state agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the appellant.

(c) A copy of the employing state agency's written decision shall be sent to the employing state agency's administrator or designee and to the public employees benefits board (PEBB) appeals manager. The employing state agency's written decision shall become the employing state agency's final decision effective fifteen days after the date it is rendered.

(d) The employing state agency may reverse eligibility, premium surcharge, or enrollment decisions based only on circumstances that arose due to delays caused by the employing state agency or error(s) made by the employing state agency.

(2) Any employee or employee's dependent who disagrees with the employing state agency's decision in response to a request for review, as described in subsection (1) of this section, may appeal that decision by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the employing state agency's written decision on the request for review.

The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-030, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-16-030, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-16-030, filed 9/25/12, effective 11/1/12; WSR 10-20-147 (Order 10-02), § 182-16-030, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-16-030, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-16-030, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-16-030, filed 10/3/07, effective 11/3/07; WSR 97-21-128, § 182-16-030, filed 10/21/97, effective 11/21/97. Statutory Authority: RCW 41.05.010 and 34.05.250. WSR 91-14-025, § 182-16-030, filed 6/25/91, effective 7/26/91.]

WAC 182-16-032 How can a decision made by the public employees benefits board (PEBB) program regarding eligibility, enrollment, premium payments, premium surcharge, eligibility to participate in the PEBB wellness incentive program or receive a PEBB wellness incentive; or a decision made by an employer group regarding life insurance or LTD insurance be appealed? (1) A decision made by the public employees benefits board (PEBB) program regarding eligibility, enrollment, premium

payment, premium surcharge, or eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive, may be appealed by submitting a notice of appeal to the PEBB appeals committee.

(2) A decision made by an employer group regarding life insurance, LTD insurance, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive may be appealed by submitting a notice of appeal to the PEBB appeals committee.

(3) The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(4) The notice of appeal from an employee or employee's dependent must be received by the PEBB appeals manager no later than thirty days after the date of the denial notice.

(5) The notice of appeal from a retiree, self-pay enrollee, or dependent of a retiree or self-pay enrollee must be received by the PEBB appeals manager no later than sixty days after the date of the denial notice.

(6) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(7) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(8) Any appellant who disagrees with the decisions of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-032, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-16-032, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-16-032, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-16-032, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-16-032, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-16-032, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-16-032, filed 10/1/08, effective 1/1/09.]

WAC 182-16-035 How can a subscriber appeal a decision regarding the administration of wellness incentive program requirements? (1) Any subscriber aggrieved by a decision regarding the completion of the wellness incentive program requirements or request for a reasonable alternative to a wellness incentive program requirement may appeal that decision to the third-party administrator contracted to administer the PEBB wellness incentive program.

(2) Any subscriber who disagrees with a decision in response to an appeal filed with the third-party administrator that administers the wellness incentive program may appeal to the public employees benefits board (PEBB) appeals committee.

(a) The notice of appeal from an employee must be received by the PEBB appeals manager no later than thirty days after the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(b) The notice of appeal from a retiree or self-pay enrollee must be received by the PEBB appeals manager no later than sixty days after the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(3) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(4) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(5) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-035, filed 9/25/14, effective 1/1/15.]

WAC 182-16-036 How can an employee who is eligible to participate in the state's salary reduction plan appeal a decision regarding the administration of benefits offered under the state's salary reduction plan? (1) Any employee who is eligible to participate in the state's salary reduction plan who disagrees with a decision that denies eligibility for or enrollment in a benefit offered under the state's salary reduction plan may appeal that decision by submitting a written request for review to his or her state agency. The state agency must receive the request for review no later than thirty days after the date of the initial denial notice. The contents of the request for review are to be provided as described in WAC 182-16-040.

(a) Upon receiving the request for review, the state agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the state agency may hold a formal meeting or hearing, but is not required to do so.

(b) The state agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the employee.

(c) A copy of the state agency's written decision shall be sent to the state agency's administrator or designee and to the public employees benefits board (PEBB) appeals manager. The state agency's written decision shall become the state agency's final decision effective fifteen days after the date it is rendered.

(d) Any employee who disagrees with the state agency's decision in response to a request for review, as described in subsection (1) of this section, may appeal that decision by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the state agency's written decision on the request for review.

The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(e) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(f) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(g) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(2) Any employee who is eligible to participate in the state's salary reduction plan aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement (FSA) and dependent care assistance program (DCAP) offered under the state's salary reduction plan may appeal that decision to the third-party administrator contracted to administer the plan by following the appeal process of the third-party administrator.

Any employee who is eligible to participate in the state's salary reduction plan who disagrees with a decision in response to an appeal filed with the third-party administrator that administers the medical FSA and DCAP under the state's salary reduction plan may appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the appeal decision by the third-party administrator that administers the medical FSA and DCAP. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(3) Any employee who is eligible to participate in the state's salary reduction plan aggrieved by a decision regarding the administration of the premium payment plan offered under the state's salary reduction plan may appeal that decision to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the denial notice by the PEBB program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

[Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-16-036, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-036, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-16-036, filed 9/25/12, effective 11/1/12; WSR 09-23-102 (Order 09-02), § 182-16-036, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-16-036, filed 10/1/08, effective 1/1/09.]

WAC 182-16-038 How can an entity or organization appeal a decision of the health care authority to deny an employer group application? An entity or organization whose employer group application is denied by the authority may appeal the decision to the public employees benefits board (PEBB) appeals committee. For rules regarding eligible entities, see WAC 182-12-111. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(1) The PEBB appeals manager shall notify the appealing party in writing when the notice of appeal has been received.

(2) The PEBB appeals committee shall render a written decision to the appellant on the notice of appeal within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(3) Any appealing party aggrieved with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-038, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-16-038, filed 9/25/12, effective 11/1/12; WSR 08-20-128 (Order 08-03), § 182-16-038, filed 10/1/08, effective 1/1/09.]

WAC 182-16-040 What should the request for review or notice of appeal contain? A request for review or notice of appeal should contain all of the following:

(1) The name and mailing address of the appealing party;

(2) The name and mailing address of the appealing party's representative, if any;

(3) Documentation, or reference to documentation, of decisions previously rendered through the appeal process, if any;

(4) A statement identifying the specific portion of the decision being appealed and clarifying what is believed to be unlawful or in error;

(5) A statement of facts in support of the appealing party's position;

(6) Any information or documentation that the appealing party would like considered and substantiates why the decision should be reversed. Information or documentation submitted at a later date, unless specifically requested by the PEBB appeals manager, may not be considered in the appeal decision;

(7) The type of relief sought;

(8) A statement that the appealing party has read the notice of appeal and believes the contents to be true and correct; and

(9) The signature of the appealing party or the appealing party's representative.

[Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (Admin # 2015-01 Rev 1), § 182-16-040, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160. WSR 08-20-128 (Order 08-03), § 182-16-040, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-16-040, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-16-040, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW 41.05.160. WSR 97-21-128, § 182-16-040, filed 10/21/97,

effective 11/21/97. Statutory Authority: RCW 41.05.010 and 34.05.250. WSR 91-14-025, § 182-16-040, filed 6/25/91, effective 7/26/91.]

WAC 182-16-050 How can an enrollee or entity request an administrative hearing if aggrieved by a decision made by the public employees benefits board (PEBB) appeals committee? (1) Any party aggrieved by a decision of the public employees benefits board (PEBB) appeals committee, may request an administrative hearing.

(2) The request must be made in writing to the PEBB appeals manager. The PEBB appeals manager must receive the request for an administrative hearing no later than thirty days of the date after the written decision by the PEBB appeals committee.

(3) The director, or his or her designee, shall preside at all hearings resulting from the filings of appeals under this section.

(4) All hearings must be conducted in compliance with WAC 182-16-050 through 182-16-110, chapter 34.05 RCW, and chapter 10-08 WAC, as described in WAC 182-16-010(2).

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-050, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-16-050, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-16-050, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-16-050, filed 10/6/10, effective 1/1/11; WSR 08-20-128 (Order 08-03), § 182-16-050, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-16-050, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-16-050, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW 41.05.160. WSR 97-21-128, § 182-16-050, filed 10/21/97, effective 11/21/97. Statutory Authority: RCW 41.05.010 and 34.05.250. WSR 91-14-025, § 182-16-050, filed 6/25/91, effective 7/26/91.]

WAC 182-16-052 Requirements to appear and represent a party in the administrative hearing process. (1) All parties must provide the presiding officer and all other parties with their name, address, and telephone number.

(2) If the party who requested a hearing is represented by a party who is not an attorney admitted to practice in Washington state, the representative must provide the presiding officer and other parties with the representative's name, address, and telephone number. In cases involving confidential information, the nonattorney representative must provide the hearing representative with a signed, written consent permitting release to the nonattorney representative of personal health information protected by state or federal law.

(3) An attorney admitted to practice law in Washington state, who wishes to represent the party who requested a hearing, must file a written notice of appearance containing the attorney's name, address, and telephone number. The attorney must file a written notice of withdrawal of representation.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-052, filed 9/25/14, effective 1/1/15.]

WAC 182-16-055 Mailing address changes. (1) The party who requested the hearing must tell the hearing representative and the presiding officer as soon as possible, when the party's mailing address changes.

(2) If that party does not notify the hearing representative and the presiding officer of a change in the party's mailing address and the presiding officer and hearing representative continue to mail notices and other important documents to the last known mailing address, the documents will be deemed received by the party.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-055, filed 9/25/14, effective 1/1/15.]

WAC 182-16-061 Presiding officers—Assignment, motions of prejudice, and disqualification. (1) **Assignment:** A presiding officer will be assigned at least five business days before a hearing. A party may ask which presiding officer is assigned to a hearing by contacting the presiding officer's office listed on the notice of hearing. If requested by a party, the presiding officer's office must send the name of the assigned presiding officer to all parties, by e-mail or in writing, at least five business days before the scheduled hearing date.

(2) **Motion of prejudice:** Any party requesting a different presiding officer may file a written motion of prejudice against the presiding officer assigned to the matter before the presiding officer rules on a discretionary issue in the case, admits evidence, or takes testimony.

(a) A motion of prejudice must include a declaration stating that a party does not believe the presiding officer can hear the case fairly. Copies of the motion must also be mailed to all parties listed on the notice of hearing.

(b) Any party's first motion of prejudice will be automatically granted. Any subsequent motion of prejudice made by a party may be granted or denied at the discretion of the presiding officer no later than seven days after receiving the motion.

(c) A party may make an oral motion of prejudice at the beginning of a hearing before the presiding officer rules on a discretionary issue in the matter, admits evidence, or takes testimony if:

(i) The presiding officer was not assigned at least five business days before the date of the hearing; or

(ii) The presiding officer was changed within five business days of the date of the hearing.

(3) **Disqualification:** A presiding officer may be disqualified from presiding over a hearing for bias, prejudice, conflict of interest, or ex parte contact with a party to the hearing.

(a) Any party may file a petition to disqualify a presiding officer pursuant to RCW 34.05.425. A petition to disqualify must be in writing and promptly mailed to all parties and the presiding officer upon discovering facts of possible grounds for disqualification.

(b) The presiding officer whose disqualification is requested will determine whether to grant the petition in a written order, stating facts and reasons for the determination. The presiding officer must mail the order no later than seven days after receiving the petition for disqualification.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-061, filed 9/25/14, effective 1/1/15.]

WAC 182-16-062 Authority of the presiding officer. (1) A presiding officer must hear and decide the issues de

novo (anew) based on what is presented during a hearing and admitted into the record.

(2) A presiding officer has no inherent or common law powers, and is limited to those powers granted by the state constitution, statutes, or rules.

(3) A presiding officer may not decide that a rule is invalid or unenforceable. If the validity of a rule is raised during a hearing, the presiding officer may allow only argument to preserve the record for judicial review.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-062, filed 9/25/14, effective 1/1/15.]

WAC 182-16-064 Applicable rules and laws. During a hearing, a presiding officer must first apply the applicable public employees benefits board (PEBB) program rules adopted in the Washington Administrative Code (WAC). If no PEBB program rule applies, the presiding officer must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, significant decisions indexed as described in WAC 182-16-130, and court decisions.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-064, filed 9/25/14, effective 1/1/15.]

WAC 182-16-066 Burden of proof and presumptions. (1) The burden of proof is a party's responsibility to provide evidence regarding disputed facts and persuade the presiding officer that a position is correct based on the standard of proof.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless stated otherwise in rules or law, the standard of proof in a hearing is a preponderance of the evidence, meaning that something is more likely to be true than not.

(3) Public officers and agencies are presumed to have properly performed their duties and acted in accordance with the law, unless substantial evidence to the contrary is presented. A party challenging this presumption bears the burden of proof.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-066, filed 9/25/14, effective 1/1/15.]

WAC 182-16-070 Calculating when a hearing deadline ends. (1) When counting days to calculate when a hearing deadline ends under WAC 182-16-050 through 182-16-110:

(a) Do not include the day of the action, notice, or order. For example, if a hearing decision is mailed on Tuesday and the party has twenty-one calendar days to request a review, start counting the days with Wednesday.

(b) If the last day of the period is a Saturday, Sunday, or legal holiday, the deadline is the next business day.

(2) The deadline is 5:00 p.m. on the last day.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-070, filed 9/25/14, effective 1/1/15.]

WAC 182-16-071 Time requirements for notices mailed by the presiding officer. (1) The presiding officer must mail a notice of a hearing to all parties and their representatives at least fourteen calendar days before the hearing date. The parties may agree to, but the presiding officer cannot impose, a shorter notice period.

(2) If a prehearing conference or dispositive motion hearing is scheduled, the presiding officer must mail a notice of the prehearing conference or dispositive motion hearing to the parties and their representatives at least seven business days before the date of the prehearing conference or dispositive motion hearing except:

(a) The presiding officer may change any scheduled hearing into a prehearing conference or dispositive motion hearing and provide less than seven business days' notice of the prehearing conference or dispositive motion hearing; and

(b) The presiding officer may give less than seven business days' notice if the only purpose of the prehearing conference is to consider whether to grant a continuance.

(3) The presiding officer must reschedule a hearing if necessary to comply with the notice requirements in this section.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-071, filed 9/25/14, effective 1/1/15.]

WAC 182-16-072 Hearing location. (1) A presiding officer must be present at all hearings. Hearings may be held either in person or telephonically.

(a) A telephonic hearing is where all parties and the presiding officer are present by telephone.

(b) An in-person hearing is where the party that requested the hearing appears face-to-face with the presiding officer. The other parties can choose to appear either in person or by telephone, but cannot be ordered to appear in person.

(2) Whether a hearing is held in person or telephonically, the parties have the right to see all documents, hear all testimony, and question all witnesses.

(3) If a hearing is originally scheduled to be held in-person, the party that requested the hearing may ask the presiding officer to change the in-person hearing to a telephonic hearing. Once a telephonic hearing begins, the presiding officer may stop, reschedule, and change the telephonic hearing to an in-person hearing if any party makes such a request.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-072, filed 9/25/14, effective 1/1/15.]

WAC 182-16-073 Rescheduling and continuances. (1) Any party may request the presiding officer to reschedule a hearing if a rule requires notice of a hearing and the amount of notice required was not provided.

(a) The presiding officer must reschedule the hearing under circumstances identified in this subsection (1) if requested by any party.

(b) The parties may agree to shorten the amount of notice required by any rule.

(2) Any party may request a continuance of a hearing either orally or in writing.

(a) In each administrative hearing, the presiding officer must grant each party's first request for a continuance. The continuance may be up to thirty calendar days.

(b) The presiding officer may grant each party up to one additional continuance of up to thirty calendar days because of extraordinary circumstances.

(c) After granting a continuance, the presiding officer's office must:

(i) Immediately telephone all other parties to inform them the hearing was continued; and

(ii) Serve an order of continuance on the parties no later than fourteen days before the new hearing date. All orders of continuance must provide a new deadline for mailing documents to the presiding officer. The new mailing deadline can be no less than ten calendar days prior to the new hearing date. If the continuance is granted pursuant to (b) of this subsection, then the order of continuance must also include findings of fact that state with specificity the extraordinary circumstances for which the presiding officer granted the continuance.

(3) Regardless of whether a party has been granted a continuance as described in subsection (1) of this section, the presiding officer must grant a continuance if a new issue is raised during the hearing and a party requests a continuance.

[Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-16-073, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-073, filed 9/25/14, effective 1/1/15.]

WAC 182-16-080 Determining if an administrative hearing right exists. (1) A party has a right to a hearing only if a law or program rule gives that right. If the party is not sure whether a hearing right exists, they may request a hearing to protect their rights.

(2) The right to a hearing does not exist unless:

(a) The public employees benefits board (PEBB) appeals committee has issued a written decision under WAC 182-16-030 (2)(b), 182-16-032(7), 182-16-035(4), 182-16-036 (1)(f), (2)(b), (3)(b), or 182-16-038(2); and

(b) A hearing of the PEBB appeals committee's written decision has been timely requested pursuant to WAC 182-16-050.

(3) If the hearing representative or the presiding officer questions the right to a hearing, the presiding officer must decide whether a hearing right exists, in a written ruling, prior to reviewing and ruling on any other issues.

(4) If the presiding officer decides a person or entity does not have a right to a hearing, the matter must be dismissed.

[Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-16-080, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-080, filed 9/25/14, effective 1/1/15.]

WAC 182-16-081 Prehearing conferences. (1) A prehearing conference is a formal proceeding conducted on the record by a presiding officer to prepare for a hearing.

(a) The presiding officer must record a prehearing conference using audio recording equipment.

(b) The presiding officer may conduct a prehearing conference in person, by telephone conference call, or in any other manner acceptable to the parties.

(2) Any party can request a prehearing conference. The presiding officer must grant each party's first request for a prehearing conference if it is filed with the presiding officer at least seven business days before the next scheduled hearing date. The presiding officer may grant requests for additional prehearing conferences.

(3) The party requesting the hearing must attend or participate in any scheduled prehearing conference. If the party requesting the hearing does not attend or participate in a scheduled prehearing conference, the presiding officer will enter an order of default dismissing the matter.

(4) During a prehearing conference the parties and the presiding officer may:

(a) Identify the issue(s) to be decided;

(b) Agree to the date, time, and place of any requested or necessary hearing(s);

(c) Identify accommodation and safety issues; or

(d) Set a deadline to exchange a proposed witness list and proposed exhibits before the hearing.

(5) After the prehearing conference ends, the presiding officer must enter a written order that recites the action taken at the prehearing conference, a case schedule outlining hearing dates and deadlines for exchanging witness lists and exhibits, and any other agreements reached by the parties.

(6) The presiding officer must mail the prehearing order to the parties at least fourteen calendar days before the next scheduled hearing.

(7) A party may object to the prehearing order by notifying the presiding officer in writing no later than ten days after the mailing date of the order. The presiding officer must mail a written ruling on the objection.

(8) If no objection is made to the prehearing order, the order determines how the case will be conducted by the presiding officer, including whether a hearing will be in person or held by telephone conference, unless the presiding officer enters an amended prehearing conference order.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-081, filed 9/25/14, effective 1/1/15.]

WAC 182-16-082 Dispositive motions. (1) A dispositive motion is a written motion that could dispose of one or all the issues in an administrative hearing request, such as a motion to dismiss or motion for summary judgment. The presiding officer may only consider written dispositive motions filed with the presiding officer.

(2) Any party may request a dispositive motion hearing by filing a written dispositive motion with the presiding officer and mailing a copy of the motion to all other parties. The presiding officer may also set a dispositive motion hearing, and request briefing from the parties, to address any possible dispositive issues the presiding officer believes must be addressed before the hearing.

(3) The deadline to mail a timely dispositive motion shall be ten calendar days before the scheduled hearing.

(4) Upon receiving a dispositive motion, a presiding officer:

(a) Must convert the scheduled hearing to a dispositive motion hearing when:

(i) The dispositive motion is timely filed with the presiding officer at least ten calendar days before the date of the hearing; and

(ii) The party filing the dispositive motion has not previously filed a dispositive motion.

(b) May schedule a dispositive motion hearing in all instances other than described in (a) of this subsection.

(5) The presiding officer may conduct the dispositive motion hearing in person or by telephone conference. For dispositive motion hearings scheduled to be held in person, the hearing representative may choose to attend and participate in person or by telephone conference call.

(6) The party requesting the dispositive motion hearing must attend and participate in the dispositive motion hearing. If the party requesting the hearing does not attend and participate in the dispositive motion hearing, the presiding officer will enter an order of default.

(7) During a dispositive motion hearing, the presiding officer can only consider the filed dispositive motion(s), any response to that motion(s), and argument on the motion(s). Prior to rescheduling any necessary hearings, the presiding officer must mail a written order on the dispositive motion(s).

(8) The presiding officer must mail the written order on the dispositive motion(s) to all parties no later than eighteen calendar days after the dispositive motion hearing is held. Orders on dispositive motions are subject to motions for reconsideration or petitions for judicial review pursuant to WAC 182-16-105 and 182-16-110.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-082, filed 9/25/14, effective 1/1/15.]

WAC 182-16-090 Orders of dismissal—Reinstating a hearing after an order of dismissal. (1) An order of dismissal is an order from the presiding officer ending the matter. The order is entered because the party who requested the hearing withdrew the administrative hearing request, the appellant is no longer aggrieved, the presiding officer granted a dispositive motion dismissing the matter, or the presiding officer entered an order of default because the party who requested a hearing failed to attend or refused to participate in the hearing.

(2) The order of dismissal becomes a final order if no party files a request to vacate the order pursuant to subsections (3) through (7) of this section.

(3) If the presiding officer enters and mails an order dismissing the hearing, the party that originally requested the hearing may file a written request to vacate (set aside) the order of dismissal. Upon receipt of a request to vacate an order of dismissal, the presiding officer must schedule and mail notice of a prehearing conference in accordance with WAC 182-16-071. At the prehearing conference, the party asking that the order of dismissal be vacated has the burden to show good cause according to subsection (8) of this section for an order of dismissal to be vacated and the matter to be reinstated.

(4) The request to vacate an order of dismissal must be filed with the presiding officer and the other parties. The party requesting that an order of dismissal be vacated should specify in the request why the order of dismissal should be vacated.

(5) The request to vacate an order of dismissal must be filed with the presiding officer no later than twenty-one calendar days after the date the order of dismissal was entered. If no request is received within that deadline, the dismissal order becomes a final order and the public employees benefits board (PEBB) appeals committee decision will stand.

(6) If the presiding officer finds good cause, as described in subsection (8) of this section, for the order of dismissal to be vacated, the presiding officer must enter and mail a written order to the parties setting forth the findings of fact, conclusions of law, and reinstatement of the matter.

(7) If the order of dismissal is vacated, the presiding officer will conduct a hearing at which the parties may present argument and evidence about issues raised in the original request for hearing. The hearing may occur immediately following the prehearing conference on the request to vacate only if agreed to by the parties and the presiding officer, otherwise a hearing date must be scheduled by the presiding officer.

(8) Good cause is a substantial reason or legal justification for failing to appear, act, or respond to an action using the provisions of Superior Court Civil Rule 60 as a guideline. This good cause exception applies only to this section. This good cause exception does not apply to any other chapter(s) or section(s) in Title 182 WAC.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-090, filed 9/25/14, effective 1/1/15.]

WAC 182-16-091 Settlement agreements. (1) If the parties reach a mutually agreeable solution the agreement must be in writing.

(2) Any written agreements will be entered into the record by either party for consideration by the presiding officer.

(3) If all of the issues are resolved by the written agreement, the presiding officer will enter and mail an order of dismissal.

(4) If all of the issues are not resolved by a written agreement, either party, or the presiding officer, may request a prehearing conference before a hearing on any remaining issues can occur.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-091, filed 9/25/14, effective 1/1/15.]

WAC 182-16-092 Withdrawing the request for an administrative hearing. (1) The party who requested an administrative hearing of a public employees benefits board (PEBB) appeals committee decision may withdraw the administrative hearing request for any reason, and at any time, by contacting the hearing representative who will coordinate the withdrawal with the presiding officer.

(2) The request for withdrawal must generally be made in writing. An oral withdrawal by the appellant is permitted during a hearing when both the presiding officer and hearing representative are present.

(3) After a withdrawal request is received, the presiding officer must cancel any scheduled hearings and enter and mail a written order dismissing the case. If a hearing request is withdrawn, the party will not be able to request another administrative hearing on the same PEBB appeals committee decision.

(4) If a party withdraws an administrative hearing request, the order of dismissal may only be vacated (set aside) according to WAC 182-16-090.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-092, filed 9/25/14, effective 1/1/15.]

WAC 182-16-100 Final order deadline—Required information. (1) Within ninety days after the hearing record is closed, the presiding officer shall mail a final order that shall be the final decision of the authority. The presiding officer shall mail a copy of the final order to all parties.

(2) The presiding officer must include the following information in the written final order:

(a) Identify the order as a final order of the public employees benefits board (PEBB) program;

(b) List the name and docket number of the case and the names of all parties and representatives;

(c) Enter findings of fact used to resolve the dispute based on the evidence admitted in the record;

(d) Explain why evidence is, or is not, credible when describing the weight given to evidence related to disputed facts;

(e) State the law that applies to the dispute;

(f) Apply the law to the facts of the case in the conclusions of law;

(g) Discuss the reasons for the decision based on the facts and the law;

(h) State the result and remedy ordered; and

(i) Include any other information required by law or program rules.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-100, filed 9/25/14, effective 1/1/15.]

WAC 182-16-105 Motion for reconsideration and response—Process. (1) Reconsideration means asking the presiding officer to reconsider his or her final order because the party believes the presiding officer made a mistake of law, mistake of fact, or clerical error.

(2) A motion for reconsideration must state in writing why the party wants the final order to be reconsidered.

(3) The other parties may respond to the motion for reconsideration. The response must state in writing why the final order should stand. Responses are optional. If a party chooses not to respond, that party will not be prejudiced because of that choice.

(4) Motions for reconsideration must be filed with the presiding officer who entered the final order.

(5) If a party files a motion for reconsideration:

(a) The presiding officer must receive the motion for reconsideration on or before the tenth business day after the final order was mailed.

(b) The party filing the motion must send copies of the motion to all other parties.

(c) Within five business days of receiving a motion for reconsideration, the presiding officer must mail to all parties a notice that provides the date the motion for reconsideration was received.

(d) Responses to a motion for reconsideration must be received by the presiding officer no later than seven business days after the presiding officer's notice in (c) of this subsection was mailed, or the response will not be considered.

(e) Responses to a motion for reconsideration must be mailed to all parties.

(6) If a party needs more time to file a motion for reconsideration or respond to a motion for reconsideration, the presiding officer may extend the deadline if the party makes a written request by the deadline.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-105, filed 9/25/14, effective 1/1/15.]

WAC 182-16-106 Decisions on motions for reconsideration. (1) Unless the motion for reconsideration is denied as untimely filed under WAC 182-16-105 (5)(a), the same presiding officer who entered the final order, if reasonably available, will also dispose of the motion as well as any responses received.

(2) The decision on the motion for reconsideration must be in the form of a written order denying the motion, or granting the motion and issuing a new written final order.

(3) If the presiding officer does not send an order on the motion for reconsideration within twenty calendar days of the date of the notice described in WAC 182-16-105 (5)(c), the motion is deemed denied.

(4) If any party files a motion for reconsideration of the final order, the reconsideration process must be completed before any judicial review may be requested. However, the filing of a petition for reconsideration is not required before requesting judicial review.

(5) An order denying a motion for reconsideration is not subject to judicial review.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-106, filed 9/25/14, effective 1/1/15.]

WAC 182-16-110 Judicial review of final order. (1) Judicial review is the process of appealing a final order to a court.

(2) The party that requested the administrative hearing may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The public employees benefits board (PEBB) program may not request judicial review.

(3) The party should consult RCW 34.05.510 through 34.05.598 for further details and requirements of the judicial review process.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-110, filed 9/25/14, effective 1/1/15.]

WAC 182-16-130 Index of significant decisions. (1) A final decision may be relied upon, used, or cited as precedent by a party if the final order has been indexed in the authority's index of significant decisions in accordance with RCW 34.05.473 (1)(b).

(2) The index of significant decisions is available to the public at the health care authority (HCA) internet page. As decisions are indexed they will be linked on this page. For additional information on how to obtain a copy of the index, contact the HCA hearing representative.

(3) A final decision published in the index of significant decisions may be removed from the index when:

(a) A precedential published decision entered by the court of appeals or the supreme court reverses an indexed final decision; or

(b) HCA determines that the indexed final decision is no longer precedential due to changes in statute, rule or policy.

[Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-130, filed 9/25/14, effective 1/1/15.]