

WAC 415-106-490 How are the PSERS disability benefits administered? This section applies to you if you are a PSERS member who becomes disabled.

This section covers disability benefits in RCW 41.37.230. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on-or-off-the-job injuries and/or illnesses.

Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

Definitions. As used in this section:

Disabled - A person who is totally incapacitated to perform the essential functions of their PSERS eligible position.

(1) **How do I apply for a disability benefit?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(b) The department must receive:

(i) A completed disability retirement application. When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application;

(ii) Additional information required by the department; and

(iii) Any other material you want the department to consider.

(c) The process for determining eligibility for a disability benefit can be lengthy and may require additional documentation to complete.

(2) **Is there a time limit for filing an application for disability benefits?** There is no time limit for applying. However, your eligibility for a benefit will be based on your condition at the time of separation.

(3) **What happens if I become disabled after I retire?** Your medical condition at the time of separation will determine whether you qualify for a disability retirement.

(4) **What evidence will the department use to determine whether I am entitled to benefits under this section?**

(a) To determine if you are entitled to disability benefits, the department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(i) Information and determinations by the department of labor and industries (L&I), a self-insurer or the Social Security Administration;

(ii) Medical, vocational, and other information about your disability;

(iii) Your job description;

(iv) Your membership records, maintained by the department;

(v) Independent medical reviews made by DRS contracted vendors; and

(vi) Any other relevant evidence.

(b) The department reserves the right to consult with a contracted vendor for the purpose of providing an independent medical review of any PSERS member who applies for disability benefits.

(5) **What would disqualify me for disability benefits?** You are not eligible for disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are disabled;

(b) Your disability is the result of your criminal conduct committed after July 1, 2006 (RCW 41.37.100).

"Criminal conduct" means:

(i) If a member is a defendant in a criminal proceeding or has been formally charged in court with a crime, and the member is applying for or receiving a disability retirement benefit for a disability that is the result of the alleged criminal conduct, the department shall withhold payment of any disability benefits until:

(A) The case or charges, or both if both are pending, are dismissed; or

(B) The member is found not guilty in the criminal case or prevails in the criminal proceeding; or

(C) The member is convicted or found to have engaged in criminal conduct in the criminal proceeding.

(ii) If the case or charges are dismissed or if a member is found not guilty or prevails in the criminal proceeding, the department shall pay the member a disability benefit if they otherwise qualify.

(iii) If the member is convicted or found to be liable for criminal conduct in a criminal proceeding, and the member's disability is the result of the criminal conduct, the department shall not pay the member a disability benefit.

(iv) In the absence of a criminal conviction, a superior court may determine by a preponderance of the evidence whether the person participated in criminal conduct.

(6) **Who decides if I meet the requirements for benefits under this section?** The director of the department of retirement systems (DRS) or their designee will decide if you meet the requirements for benefits under this section.

(7) **What if I disagree with a decision made by the director or their designee?** If you disagree with the decision of the director of DRS or their designee, you may petition for review under chapter 415-04 WAC.

(8) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.37.090(3) or contact the department.

(9) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law. See chapters 41.54 RCW and 415-113 WAC. You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(10) **How long will I continue to receive a monthly disability allowance?** You may receive a monthly disability allowance throughout your lifetime, subject to the provisions of subsection (11) of this section.

(11) **Is it possible to lose my monthly disability allowance after I begin receiving it?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability

benefits. You will no longer be eligible to receive a disability allowance if the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.37.010, at comparable compensation; and

(iii) If your monthly disability allowance is from a catastrophic duty disability, also refer to WAC 415-106-550.

(b) If you return to employment and reenter PSERS membership, your benefits will cease.

(12) If I take my disability benefit in a lump sum and return to work, may I restore my service credit? Yes. You may restore your service credit if you take a lump-sum benefit and return to PSERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump-sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you must pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165 and 41.37.200.

(13) Are my disability benefits taxable? You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

[Statutory Authority: RCW 41.50.050 and 41.37.230. WSR 24-08-071, § 415-106-490, filed 4/2/24, effective 4/3/24.]