

**WAC 415-108-434 PERS Plan 1 nonduty disability benefits.** This section covers benefits provided in RCW 41.40.230 through 41.40.250 for PERS Plan 1 members who incur a disability outside the performance of duty. You may also be eligible for benefits from the Washington state departments of labor and industries and social and health services, the U.S. Social Security Administration, your employer, and other disability insurers.

(1) **Am I eligible for a PERS Plan 1 nonduty disability benefit?** You are eligible for a PERS Plan 1 nonduty disability benefit if the department determines that all of the following are true:

- (a) You are a PERS Plan 1 member and have been employed with a PERS eligible employer for at least five years;
- (b) You separate from PERS employment;
- (c) At the time you separated from PERS employment, you were totally incapacitated to perform the duties of your job or any other position for which you are qualified by training or experience;
- (d) Your disability is likely to be permanent;
- (e) Your disability was not incurred during the performance of your job duties; and
- (f) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.40.054.

(2) **What is the PERS Plan 1 nonduty disability benefit?** If you qualify to receive a nonduty disability benefit, you will receive a benefit under RCW 41.40.235 or, if you were a PERS Plan 1 member on February 25, 1972, you may irrevocably choose to receive a benefit under RCW 41.40.250.

If you are eligible to receive a benefit under RCW 41.40.235, your benefit will equal two percent of your average final compensation for each year of service credit, reduced by two percent for every year or fraction of a year that your age is less than fifty-five. For example, if you are fifty years old, your monthly disability benefit will be reduced by ten percent.

- (a) Your monthly disability benefit will not exceed sixty percent of your average final compensation.
- (b) The degree of your disability or impairment will not affect the amount of your benefit.
- (c) Your monthly disability benefit will be reduced by any amounts you receive for the same disability under workers' compensation or similar law. See RCW 41.40.300.
- (d) Your monthly disability benefit will be actuarially reduced if you choose a benefit option with a survivor feature. See WAC 415-108-326.

(3) **How do I apply?** To apply for a nonduty disability benefit the following documents must be submitted to the department:

- (a) A properly completed three-part disability retirement application, consisting of:
  - (i) Part 1: Application for disability retirement. You must complete and sign the application. If you are married, your spouse must sign consenting to the option you choose. Your signature(s) must be notarized.
  - (ii) Part 2: Employer's statement and report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by your employer.
  - (iii) Part 3: Medical report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by a person licensed according to Washing-

ton state law to practice medicine and/or surgery (including osteopathic medicine and/or surgery), advanced nursing, or psychology.

(b) Additional information, such as vocational and/or occupational information, requested by the department; and

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

(4) **Who is responsible for expenses related to my application?** You are responsible for all costs associated with your application for benefits.

(5) **What is the time limit for filing an application for a nonduty disability benefit?** There is no time limit for filing an application for a nonduty disability benefit. However, you must prove that you were totally incapacitated at the time you separated from PERS employment.

(6) **What information will the department use to determine whether I am entitled to a nonduty disability benefit?** To determine your eligibility for a nonduty disability benefit, the department will consider any relevant information submitted by you, your employer, or your physician, or otherwise available, including:

(a) Information and determinations by the department of labor and industries or a self-insurer;

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

(c) Your job description;

(d) Your membership records, maintained by the department; and

(e) Any other relevant evidence.

(7) **If I am eligible for a service retirement under RCW 41.40.180, may I still apply for a disability retirement?** Yes, if you are eligible for both you may elect a disability retirement or a service retirement. If you elect a service retirement, you may not later change to a disability retirement.

(8) **When will the department evaluate my eligibility for benefits?** The department will evaluate your eligibility for a nonduty disability benefit once it receives all three parts of your properly completed application, supporting documentation, and all other information requested by the department.

(9) **If my application is approved, when will my benefit accrue?** If your application for a nonduty disability benefit is approved, your benefit will accrue from the first day of the calendar month following the month you separate from service.

(a) If you separate from service **before** your application is approved, you will be eligible for a retroactive payment of the benefit that accrued between the month following your date of separation from service and the approval of your application.

(b) If you separate from service **after** your application is approved, your disability benefit will not begin to accrue **until** you separate from service. If you are on an approved leave of absence (either paid or unpaid) at the time of your application for a benefit, you have not separated from service.

(i) If you do not separate from service within ninety days of the department's approval of your application, the approval will lapse.

(ii) If your approval for a benefit lapses while you are still on an authorized leave of absence, you may request a reinstatement of approval. The department will reinstate its approval only if your employer verifies that you have been on an authorized leave of absence continuously from the time your application was first approved.

(10) **What are my options if my application is denied?**

(a) If your application is denied and you continue in or resume PERS employment, you may reapply for a nonduty disability benefit at a later time if your condition worsens. You must submit new information to the department that shows you meet the requirements in subsection (1) of this section.

(b) If your application is denied, you may petition for review of the department's decision under the provisions of chapter 415-04 WAC.

**(11) What happens if I die within sixty days of applying for nonduty disability benefits?** If you die within sixty days of the date the department receives your application for a nonduty disability benefit, the beneficiary you name on the application may choose to receive either:

(a) A lump sum amount equal to the contributions in your PERS account; or

(b) A monthly benefit calculated according to whichever of the following methods will give your beneficiary the greatest benefit:

(i) A benefit calculated according to subsection (2) of this section and the benefit option indicated on your application; or

(ii) If otherwise qualified, the benefit provided in RCW 41.40.270 (4) (a).

**(12) What information must I provide to the department if I am receiving nonduty disability benefits?** If you are receiving nonduty disability benefits, you must report the following to the department:

(a) Any compensation you are eligible to receive under workers' compensation or similar law for the same disability;

(b) Any improvement in your condition. Your doctor is also responsible to report any improvements; and

(c) If you resume employment, either public or private, the name of your employer and amount of compensation, regardless of the number of hours you work.

**(13) Is my medical condition monitored while I receive disability benefits?** The department may require comprehensive medical examinations, pursuant to RCW 41.40.310, to reevaluate your eligibility for disability benefits. The department will pay the medical fees associated with these examinations.

**(14) How long will I receive a monthly disability benefit?** During your lifetime, you will receive a monthly disability benefit unless one of the following occurs:

(a) If you return to gainful employment, your monthly disability benefit will be recalculated, as set forth in subsection (15) of this section.

(b) If you return to active PERS membership, your disability benefit will be discontinued.

(c) If a doctor determines that you are no longer totally incapacitated, your disability benefit will be discontinued.

(d) If you refuse to submit to medical examinations required by RCW 41.40.310, your disability benefit will be discontinued.

**(15) If I return to employment, how will my monthly disability benefit be recalculated?** The recalculation of your disability benefit is based on whether your current compensation is greater than your allowable earnings. Your "allowable earnings" are the difference of your compensation at retirement, adjusted for inflation, and your monthly disability benefit.

(a) If your current compensation is **greater** than your allowable earnings your benefit will be reduced or discontinued.

**Example of benefit being reduced:**

Due to a nonduty-related disability, Joe separated from service and began receiving a disability benefit of \$1,000 per month. Joe became gainfully employed earning \$2,500 per month. Joe's compensation at the time of separation adjusted for inflation is \$3,000. Because Joe's current compensation, \$2,500, is greater than his allowable earnings ( $\$3,000 - \$1,000 = \$2,000$ ) by \$500, his benefit will be reduced by \$500. Joe's reduced disability benefit will be \$500 per month ( $\$1,000 - \$500$ ).

**Example of benefit being discontinued:**

Due to a nonduty-related disability, Heidi separated from service and began receiving a disability benefit of \$1,000 per month. Heidi became gainfully employed earning \$4,000 per month. Heidi's compensation at the time of separation adjusted for inflation is \$3,000. Because Heidi's current compensation, \$4,000, is greater than her allowable earnings ( $\$3,000 - \$1,000 = \$2,000$ ) by an amount (\$2,000) that is greater than her disability benefit (\$1,000), her benefit will be discontinued.

(b) If your current compensation is **less** than your allowable earnings, then your benefit will not be reduced or discontinued.

**Example:**

Due to a nonduty-related disability, you separated from service and began receiving a disability benefit of \$1,000 per month. You became gainfully employed earning \$1,000 per month. Your compensation at the time of separation adjusted for inflation is \$3,000. Because your current compensation, \$1,000, is less than your allowable earnings ( $\$3,000 - \$1,000 = \$2,000$ ), your disability benefit will not be reduced or discontinued.

(16) **Is my PERS Plan 1 nonduty disability benefit taxable?** You should consult with your tax advisor regarding all payments you receive from the department. The department reports disability benefits to the Internal Revenue Service as required by federal law and does not:

- (a) Guarantee that payments are 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 determination; or
- (d) Assume any liability for your compliance with the Internal Revenue Code.

(17) **Are disability benefits subject to court or administrative orders?** Your nonduty disability benefit may be subject to court or administrative orders. For more information, see RCW 41.40.052(3) or contact the department.

(18) **If I am a member of more than one retirement system, does my eligibility for a PERS Plan 1 nonduty disability make me eligible for a benefit from the other system?** If you are a member of more than one retirement system, you may be entitled to additional benefits under portability law. See chapters 41.54 RCW and 415-113 WAC.

[Statutory Authority: RCW 41.50.050(5), 41.40.230, 41.40.235, 41.40.250. WSR 09-18-051, § 415-108-434, filed 8/27/09, effective 9/27/09.]