

WSR 24-05-040  
PROPOSED RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS

[Filed February 14, 2024, 2:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-21-109.

Title of Rule and Other Identifying Information: Public safety employees' retirement system disability benefits.

Hearing Location(s): On March 28, 2024, at 1:00 p.m., via Microsoft Teams <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 254 393 469 073, Passcode TwuQAK; or phone 833-322-1218, Code 847 758 002#.

Date of Intended Adoption: April 2, 2024.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by March 26, 2024.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by March 26, 2024.

Statutory Authority for Adoption: RCW 41.50.050 and 41.37.230.

Statute Being Implemented: RCW 41.37.230.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5) (a) (i) does not apply to this proposed rule and DRS is not voluntarily making it applicable to DRS.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

February 14, 2024  
Bianca Stoner  
Rules Coordinator

**OTS-5131.2**

NEW SECTION

**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.

AMENDATORY SECTION (Amending WSR 22-13-091, filed 6/13/22, effective 7/14/22)

**WAC 415-106-500 PSERS disability benefit((s)).** (~~(This section covers disability benefits provided for 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-the-job 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.)~~

**(1) Am I eligible for a PSERS disability benefit((s))?** You are eligible for a disability benefit((s)) if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other PSERS position for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

**(2) If eligible, what will I receive as a monthly disability allowance?**

(a) If you have at least 10 years of service credit in PSERS, you will receive a monthly allowance equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age **60**. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

(b) If you have less than 10 years of service credit, you will receive a monthly allowance<sup>1</sup> equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age **65**. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

<sup>1</sup>You may choose to receive a lump sum payment instead of a monthly allowance if your initial monthly allowance will be less than \$50. See RCW 41.37.200.

See WAC 415-02-320 for early retirement factors and examples.

**(3) ((How do I apply?)**

~~(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.~~

~~(i) **Part 1:** Disability retirement application. If you are married, your spouse's consent may be required as described in WAC 415-106-600.~~

~~(ii) **Part 2:** Employer's statement and report. Your employer must complete and sign Part 2, and return it directly to the department.~~

~~(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return it directly to the department. You are responsible for all medical expenses related to your application for benefits. A copy of your job description must be provided to the physician at time of examination.~~

~~(b) 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.~~

~~(4) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.~~

~~(5) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, you should request a benefit estimate from the department, as there may be a difference in the dollar amount of your monthly allowance.~~

~~(6)) **Once my application is approved, when will my monthly allowance begin?**~~

(a) Your disability allowance will accrue from the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire 90 days after the approval date if you have not officially separated from PSERS employment.

(i) If you are continuing to perform the duties of your position or another PSERS position, you may reapply for disability benefits according to ~~((subsection (3) of this section))~~ WAC 415-106-490 if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

~~((7) What are my options if my application is denied?~~

~~(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.~~

~~(b) If you continue to work in a PSERS position, you may reapply for disability benefits at a later time if your condition worsens.~~

~~(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.~~

~~(8) 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.~~

~~(9) 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.~~

~~(10) Am I eligible for disability benefits if my disability is the result of my criminal conduct? No. See RCW 41.37.100.~~

~~(11) 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.~~

~~(12) How long will I continue to receive a monthly disability allowance? You may receive a monthly allowance throughout your lifetime, subject to the provisions of subsection (13) of this section.~~

~~(13) 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 both of 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 a comparable compensation.~~

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

~~(14) 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 will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165 and 41.37.200.)~~

#### NEW SECTION

**WAC 415-106-510 Does my disability qualify me for a PSERS catastrophic duty disability benefit?** (1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:

(a) The disability or disabilities that qualified you for a PSERS disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and

(b) Your disability or disabilities have lasted or are expected to last at least 12 months, or are expected to result in your death.

(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.

Example 1:

Totally disabled, but not from a duty injury - Not eligible for a catastrophic duty disability benefit.

A PSERS member suffers a knee injury on duty, leaving them disabled from PSERS employment. The knee injury, by itself, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a disability, but not for a catastrophic duty disability because the fully disabling condition, ALS, is not duty related.

Example 2:

Totally disabled, duty injury totally disabling - Eligible for catastrophic duty disability benefits.

A PSERS member suffers a knee injury while fishing. The knee injury, by itself, is neither duty related nor catastrophically disabling. The member also suffers severe injuries on the job while responding to an emergency event at a correctional facility, leaving the member fully disabled. The Social Security Administration grants the member a full disability based on the member's total condition. The member qualifies for a PSERS catastrophic duty disability benefit because the severe injuries, by themselves, render the member totally disabled.

(3) If you receive catastrophic duty disability benefits, the department will periodically review your income and medical status for

continued eligibility. This review is not a reassessment of your initial determination, but an assessment of whether there has been any change in your condition. If it is determined that there has been a change in your condition and you are no longer eligible under subsection (1) of this section, or if you fail to provide required documentation or cooperate with the review, your catastrophic duty disability benefit may be discontinued or converted to a different retirement type. DRS will notify you of your review at least 30 days before it starts.

(a) **Income review:** At least annually, you must submit documentation to verify that your income from earnings is below the defined income threshold as defined in subsection (4)(c) of this section. You must also notify the department within 30 calendar days of any changes in your income that could impact your eligibility including, but not limited to, wages and earnings from self-employment (see subsection (4)(c), (d) and (f) of this section). If DRS is not notified on time, you may be responsible for any resulting overpayment.

Documentation you may need to provide includes a federal or state income tax return from the most recent year, employment security records for the last four quarters, self-employment documents or 1099-R, or other documentation as requested by the department.

(b) **Medical review:** The department will conduct a continuing disability review (CDR) at least once every three years if at the time of your last determination your condition is expected to improve, or every six years if your condition is not expected to improve, until you reach age 65. The department may increase the frequency of your CDRs and reserves the right to require a CDR at any time if notified of a change in your condition, but not more than once every 12 months. The department may also waive the CDR if your disability is determined to be permanent or terminal.

(i) DRS will first review any updated medical information available from any labor and industries claims related to your line of duty injury to determine if additional medical information is needed from you and your primary care provider.

(ii) If needed, the department will provide you with a Disability Review form, which asks for information about whether your medical condition has improved since your last eligibility determination. You will have at least 30 days to complete and return this form to the department or notify the department that you need additional time. Once received, the department will have 90 days to review this information and either notify you of your continued eligibility or the need for additional information. Before making a change to your disability retirement status, the department may consult with a contracted vendor for the purpose of providing an independent medical review.

(4) **Definitions.** As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW 41.37.230(3).

(b) **Continuing disability review (CDR)** means an assessment of your current medical condition to determine if it continues to be catastrophically disabling. The department will review recent documentation, with supplemental assessment by external medical experts at the department's discretion.

(c) **Defined income threshold** means any substantial gainful activity that produces average earnings, as defined in (d) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they



are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(d) **Earnings** are any income or wages received, which are reportable as wages or self-employment income to the IRS.

(e) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

(f) **Substantial gainful activity** describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful, and it may be, but is not required to be, from work or self-employment. Earnings as defined in this section include compensated work activity that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work activity may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your PSERS position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

(g) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

#### NEW SECTION

**WAC 415-106-520 How are the PSERS catastrophic duty disability benefits calculated?** (1) **Catastrophic duty disability:** As a catastrophic duty disability retiree, you may choose between:

(a) A taxable, one-time lump-sum payment; or

(b) A monthly benefit equal to:

(i) Seventy percent of your average final compensation (AFC), which is nontaxable, reduced by any disability benefits provided under Title 51 RCW and federal Social Security disability benefits (SSDI), if necessary to ensure that the total combined benefits do not exceed 100 percent of the member's average final compensation (AFC). Any such adjustment will be applied prospectively from the time the Title 51 RCW or Social Security determination is made, even if the Title 51 RCW or Social Security disability (SSDI) benefits are retroactively adjusted.

(ii) The reduced benefit cannot be less than the earned service retirement benefit. When the earned service benefit is more than the reduced benefit, the difference is taxable (subject to any basis recovery).

**Calculation of monthly disability benefit:**

**Example 1:** Terry was approved for catastrophic duty disability. The average final compensation (AFC) was \$10,000. Terry was not receiving benefits from L&I or Social Security disability insurance (SSDI). Terry had 20 years of service credit at the time of retirement. To determine the catastrophic duty disability benefit amount:

1. 70% of AFC = Monthly disability benefit  
 $.70 \times \$10,000 = \$7,000$
2.  $2\% \times \text{AFC} \times \text{Service Years} = \text{Earned benefit}$   
 $.02 \times \$10,000 \times 20 = \$4,000$

Since there is no offset and the monthly disability benefit is greater than the earned benefit, Terry's nontaxable monthly benefit will be \$7,000.

**Example 2:** Pat was approved for catastrophic duty disability. The average final compensation (AFC) was \$10,000. Pat was receiving benefits from L&I and Social Security disability insurance (SSDI) in the amounts of \$5,000 and \$2,000. Pat had 2 years of service credit at the time of retirement. To determine the catastrophic duty disability benefit amount:

1. 70% of AFC = Monthly disability benefit  
 $.70 \times \$10,000 = \$7,000$
2. Monthly disability benefit + L&I benefits + SSDI benefit = Total of all benefits  
 $\$7,000 + \$5,000 + \$2,000 = \$14,000$
3. Total of all benefits - AFC = Reduction amount  
 $\$14,000 - \$10,000 = \$4,000$
4. Monthly disability benefit - Reduction amount = Reduced monthly benefit  
 $\$7,000 - \$4,000 = \$3,000$
5.  $2\% \times \text{AFC} \times \text{Service Years} = \text{Earned benefit}$   
 $.02 \times \$10,000 \times 2 = \$400$

Since the reduced monthly benefit amount is greater than the earned benefit, Pat's nontaxable monthly benefit will be \$3,000.

**Example 3:** Chris was approved for catastrophic duty disability. The average final compensation (AFC) was \$10,000. Chris was receiving benefits from L&I and Social Security disability insurance (SSDI) in the amounts of \$5,000 and \$2,000. Chris had 20 years of service credit at the time of retirement. To determine the catastrophic duty disability benefit amount:

1. 70% of AFC = Monthly disability benefit  
 $.70 \times \$10,000 = \$7,000$
2. Monthly disability benefit + L&I benefits + SSDI benefit = Total of all benefits  
 $\$7,000 + \$5,000 + \$2,000 = \$14,000$
3. Total of all benefits - AFC = Reduction amount (to not exceed 100% of AFC)  
 $\$14,000 - \$10,000 = \$4,000$
4. Monthly disability benefit - Reduction amount = Reduced monthly benefit  
 $\$7,000 - \$4,000 = \$3,000$
5.  $2\% \times \text{AFC} \times \text{Service Years} = \text{Earned benefit}$   
 $.02 \times \$10,000 \times 20 = \$4,000$

6.	Earned benefit - Reduced monthly benefit	=	Difference
	\$4,000 - \$3,000	=	\$1,000

Chris is entitled to the greater of the catastrophic duty disability retirement calculation or the earned benefit. Since the earned benefit is greater than the reduced catastrophic duty disability benefit, Chris' monthly benefit will be \$4,000 and \$1,000 of that benefit will be taxable (subject to any basis recovery).

#### NEW SECTION

**WAC 415-106-530 Is my disability benefit affected by choosing a survivor option?** (1) If you choose a benefit option with a survivor feature at the time of retirement, your survivor beneficiary will receive an ongoing monthly disability benefit after your death. Your disability benefit will be actuarially reduced to offset the cost of providing payments over two lifetimes. The survivor options are further described in WAC 415-106-600. See WAC 415-02-380 for more information and examples on how the actuarial reduction is applied for a survivor benefit.

(2) If your retirement status changes due to the department's acceptance of a new retirement application from service retirement to a disability retirement or catastrophic duty disability retirement, or a disability retirement to a catastrophic duty disability retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option.

Example 1: Pat retired with a disability retirement benefit with survivor option three (50%). Pat's condition worsened. Pat applied for and was granted a catastrophic duty disability retirement. Pat selected survivor option two (100%) on the catastrophic application. Pat's catastrophic duty disability retirement benefit will be calculated to reflect this survivor option.

Example 2: Pat retired with a disability retirement benefit with survivor option two (100%) for their spouse. Pat's condition worsened. Pat applied for and was granted a catastrophic duty disability retirement benefit. Pat selected survivor option one (no ongoing survivor benefit after Pat's death). Pat's spouse will need to agree to this survivor option and the application will need to be notarized.

#### NEW SECTION

**WAC 415-106-540 Is my catastrophic duty disability benefit reduced for early retirement?** If you retire for a catastrophic duty disability, your disability benefit will not be reduced for early retirement.

#### NEW SECTION

**WAC 415-106-550 When does my disability benefit end?** The department may require comprehensive medical or psychological examina-

tions to reevaluate your continued eligibility for disability benefits. For catastrophic duty disability benefits, the department may also require or offer to provide comprehensive vocational examinations and/or submission of earnings information to evaluate your continued eligibility. You are required to contact the department if your medical/vocational or financial situation changes.

(1) Your disability benefit will cease if:

(a) You return to work in a PSERS-eligible position; or

(b) Medical examination reveals you are no longer totally incapacitated for employment in a PSERS-eligible position.

(2) Your catastrophic duty disability benefit will cease if:

(a) You return to work in a PSERS-eligible position;

(b) Medical/vocational examination, or other information commonly available or provided to the department by an employer, reveals that your disability no longer prevents you from performing substantial gainful activity; or

(c) Your earnings exceed the threshold for substantial gainful activity.

If you believe you are capable of returning from your disability to work for your former employer and your employer agrees that you have met their requirements (examples could include a fit for duty test or polygraph), your disability benefit will end on the date you start working, as reported to the department by your employer. If you do not meet the requirements of your employer, you may challenge your employer's decision through the collective bargaining process, or other legal process against your employer.

#### NEW SECTION

**WAC 415-106-560 Can my disability retirement type change?** Your disability retirement type may change depending upon the circumstances.

If your original disabling condition or conditions worsen, improve, or you recover, the department may adjust your benefit.

(1) Worsening - If the condition or conditions that caused your disability worsen, your retirement may be changed to a catastrophic duty disability. The timing of this change is dependent on medical determination dates. You must submit an application and provide sufficient medical evidence to support a claim that your condition or conditions qualify you for a catastrophic duty disability. The worsening must be caused by or directly related to the original injury or injuries or illness and not due to the natural aging process or a succeeding cause.

Example 1: A member retires on a disability retirement due to a knee injury. The member has surgery related to the knee injury after retirement and suffers side effects from the surgery that prevent the member from performing any substantial gainful employment. The member is eligible to have their benefit adjusted because the aggravation is directly related to the original injury.

Example 2: A member retires on a disability retirement due to a knee injury. The member reinjures the knee in a skiing accident and is rendered unable to perform any substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is the result of a succeeding cause and not the original injury.

Example 3: A member retires on a disability retirement due to a knee injury. The condition gradually worsens over time until the member is no longer capable of substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is due to aging.

(2) Improvement - If your condition or conditions improve such that you are capable of substantial gainful employment, the department will adjust your catastrophic duty disability benefit to a disability benefit.

(3) Recovery - If your condition or conditions improve such that you are able to return to work in a PSERS-eligible position, the department will terminate your disability retirement or convert you to a normal retirement benefit if you are eligible.

AMENDATORY SECTION (Amending WSR 22-01-061, filed 12/8/21, effective 1/8/22)

**WAC 415-106-600 What are my retirement benefit options?** Upon retirement for service under RCW 41.37.210 or retirement for disability under RCW 41.37.230, you must choose to have your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly

retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following (~~four~~) five exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.37.050(3).

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(e) Retirement type changes. If your retirement status changes due to the acceptance of a new retirement application from service retirement to a disability or catastrophic retirement, or disability to catastrophic retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option in accordance with WAC 415-106-530.

**(7) Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate. See RCW 41.37.170.