

WSR 21-01-209
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed December 23, 2020, 9:51 a.m., effective January 23, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To describe the process for periodic reviews to assess continued eligibility for law enforcement officers' and firefighters' Plan 2 catastrophic duty disability benefits.

Citation of Rules Affected by this Order: Amending WAC 415-104-480.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 20-23-117 on November 18, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 23, 2020.

Tracy Guerin
Director

OTS-2683.3

AMENDATORY SECTION (Amending WSR 18-13-078, filed 6/15/18, effective 7/16/18)

WAC 415-104-480 Does my disability qualify me for a LEOFF Plan 2 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 LEOFF Plan 2 duty 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 twelve 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.

Examples:

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

A LEOFF Plan 2 member suffers a knee injury on duty, leaving ~~((them))~~ the member disabled from LEOFF employment. The knee injury, ~~((standing alone))~~ 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 duty disability, but not for a catastrophic disability ~~((since))~~ because the fully disabling condition, ALS, is not duty related.

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

A LEOFF Plan 2 member suffers a knee injury while fishing. The knee injury, ~~((standing alone))~~ by itself, is neither duty related nor catastrophically disabling. The member also suffers severe burns while fighting a fire, leaving ~~((him/her))~~ the member fully disabled. The Social Security Administration grants the member a full disability based on ~~((his/her))~~ the member's total condition. The member qualifies for a LEOFF plan 2 catastrophic disability benefit because the burn injuries, ~~((standing alone))~~ by themselves, render ~~((him/her))~~ the member totally disabled.

(3) Medical insurance premium reimbursement is an additional benefit for a member who is catastrophically disabled in the line of duty (RCW 41.26.470). However, if you choose to withdraw one hundred fifty percent of your accumulated contributions pursuant to RCW 41.26.470(6) you are not entitled to the medical insurance premium reimbursement.

(4) If you receive catastrophic duty disability benefits, the department will periodically review your continued eligibility. If it is determined that you are no longer eligible, 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 status.

(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 (5)(c) of this section. The documentation must include a signed copy of your filed tax return showing income from all sources for the prior year. You must also notify the department within thirty 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 (5)(c), (d) and (f) of this section.)

(b) Medical review: The department will conduct a continuing disability review (CDR) at least once every three years until you reach age sixty-five. The department may increase the frequency of your CDRs if your condition is expected to improve, and reserves the right to require a CDR at any time at its discretion. The department may also waive the CDR if your disability is determined to be terminal.

(5) Definitions. As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW 41.26.470(9).

(b) **Continuing disability review (CDR)** means an assessment of your current medical condition to determine if it continues to be catastrophically disabling. The department's medical professional 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))~~ (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.

~~((d))~~ (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 includes 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 LEOFF 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.

~~((e) Defined income threshold~~ means any substantial gainful activity that produces average earnings, as defined in (a) 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.

~~(f))~~ (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.

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-480, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-104-480, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5) and 41.26.470 (6) and (7). WSR 06-18-007, § 415-104-480, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5) and 41.26.470. WSR 04-22-074, § 415-104-480, filed 11/1/04, effective 12/2/04.]