



Ohio Administrative Code

Rule 3309-1-41 Appeals for denial and termination of disability benefits.

Effective: May 1, 2022

(A) The following procedures will govern in cases of a member's appeal of a denial of disability benefits including an automatic denial under paragraph (H) of rule 3309-1-40 of the Administrative Code or a disability benefit recipient's appeal of a termination of disability benefits, excluding when the recommendation to terminate was certified pursuant to paragraph (M)(2)(b) of rule 3309-1-40 of the Administrative Code.

(1) After formal board action is taken or an automatic denial under paragraph (H) of rule 3309-1-40 of the Administrative Code, a notice of denial or termination of disability benefits shall be issued to the applicant or former disability benefit recipient by regular or certified U.S. mail. This notice shall inform the member of:

(a) The medical evidence reviewed;

(b) The board's denial or termination of disability benefits; and

(c) The procedures for appeal of a denial or termination of disability benefits as set forth in this paragraph.

(2)

(a) The member may appeal a decision to deny or terminate disability benefits, excluding a termination pursuant to paragraph (M)(2)(b) of rule 3309-1-40 of the Administrative Code, within fifteen days of the date on the notice of denial or termination by filing a notice of intent to appeal such decision and by providing additional evidence. Such additional evidence must be received by the board within ninety days from the date on the notice of denial or termination and must be submitted in writing by the member or by counsel and/or personal physician on behalf of the member.

(b) If a member does not submit a notice of intent to appeal or additional evidence as required by this



rule, all appeal rights shall cease and the prior decision of the board shall become final. The member shall be notified of all future rights and/or limitations to apply for disability benefits.

(c) The member may request, as part of the appeal, a personal appearance before the board with counsel and/or a personal physician. The request for a personal appearance must be in writing and submitted to the board within fifteen days of the date on the notice of denial or termination. A personal appearance will not be granted unless additional evidence as required by this paragraph is received by the board within ninety days from the date on the notice of denial or termination. If a personal appearance is granted, the member will be notified in writing of the date and time.

(d)

(i) For appeals whose standard is whether the member is physically and mentally capable of performing the member's last assigned primary duty as an employee, "additional evidence" means evidence that is current and pertinent to the illness or injury for which the disability was claimed and that has not been submitted before.

(ii) For appeals whose standard is whether the member is physically and mentally capable of performing the duties of a position that meets the criteria of divisions (C)(1) to (C)(3) of section 3309.41 of the Revised Code, "additional evidence" means evidence that is current and and pertinent to the illness or injury that the member claims supports the member's inability to perform the duties of a position that meets the criteria of divisions (C)(1) to (C)(3) of section 3309.41 of the Revised Code.

(e) Upon a finding that a member was hospitalized or in a nursing home or other care facility at the time notice of denial or termination was sent, the board may allow a late appeal, but in no event more than thirty days after the members discharge from the hospital or care facility.

(3) All costs incidental to the appeal and/or personal appearance shall be at the expense of the member.

(4) If a personal appearance is granted, the member shall appear before the board on the date and at the time specified by the board, or as otherwise requested by the member and agreed to by the board.



If the member fails to appear on the specified date and time, all rights to a personal appearance shall terminate and the appeal shall be decided on the basis of the written evidence previously submitted.

(5) A personal appearance, if granted, shall be conducted as follows:

(a) The member shall appear in person and may be represented by counsel, the member's agent, and/or a personal physician, if desired. The member shall provide the name, title, and position of each person appearing on the member's behalf at least seven days prior to the hearing.

(b) The board shall be responsible for conducting the hearing.

(c) A recording of the hearing will be made to provide the board and the medical advisory committee with a record for further review.

(d) Only one such appearance per application or termination will be allowed.

(6) During the appeal process, the board's physician or the medical advisory committee may request that the member undergo an additional medical examination by an examining physician.

(7) Following receipt of additional evidence and a personal appearance, if applicable, all evidence and information submitted shall be reviewed by the board's medical advisory committee and/or the board's physician who shall make a recommendation to the board.

(a) If the board concurs with a recommendation to grant the appeal, disability benefits will be paid from the benefit effective date, or if a recommendation for termination of disability benefits was appealed and the appeal is granted by the board, the payments will be resumed from the date of termination, and the applicant or benefit recipient will be so notified.

(b) If the board concurs with a recommendation for denial of the appeal, the applicant or benefit recipient will be notified by letter of the board's decision, such decision shall be final and all appeal rights shall cease.

(B) The school employees retirement system administrative staff shall have the authority to act for



the board in matters related to the appeal proceedings, but shall not have authority to decide appeals.

(C) Any future applications for disability benefits filed after a denial of appeal must be submitted with medical evidence supporting progression of the former illness or injury or evidence of a new illness or injury. If such evidence is evaluated by the medical advisory committee and found to be inadequate to establish the progression of the former illness or injury or the existence of a new illness or injury, the application shall be voided.