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CORRESPONDENCE MEMORANDUM

DATE: September 4, 2003

TO: Employee Trust Funds Board
Wisconsin Retirement Board
Teachers Retirement Board
Group Insurance Board

FROM: Audrey Koehn, Director
Disability Programs Bureau

SUBJECT: Draft Language for Revision to the Administrative Code to Define the Medical Reports and Processes under § 40.63 Disability Retirement and ETF 50.40 LTDI

The Department is requesting approval of the attached draft language to revise the administrative code to include definition of medical reports and processes under the disability retirement and LTDI benefit.

All Boards approved a scope statement to define medical reports and processes in September 1999. Since that time, several proposed decisions in appeals presented to the Boards have interpreted what constitutes a disability medical report, what is meant by *approved* or *appointed by the Department* and how many medical reports can be considered for an application or claim. These various interpretations have led to difficulties in administration of benefits in a fair and equitable manner.

To clarify these interpretations, the Department has drafted administrative code provisions to define the medical reports and processes used when handling an application or claim for disability benefits.

Depending on the amount of input from the various Boards and the public hearing, the Department may need to bring a subsequent draft back for consideration or may proceed with the promulgation process.

If there are particular questions Board members wish to discuss with me prior to the meeting, please contact me at 608-261-8173.

Attachment

Board	Mtg Date	Item #
JL	9/25/2003	5
TR	9/25/2003	5
WR	9/25/2003	6
ETF	9/26/2003	5

***Draft Disability Rule Revisions for Medical Report Requirements**

Draft as of September 4, 2003

*** NOTE: This is a draft of proposed changes to subchapter II of ETF Chapter 50, addressing medical report requirements for disability annuity applications. This draft is for board discussion purposes only. It includes notes in *italics* indicating the proposed changes and how the proposed language fits with current rule. Once the Department has received feedback on this draft from all the Boards, the text will be reformatted in appropriate rule-revision layout, as required.

Summary of Proposed Organization of Rule within Subchapter II of ETF Chapter 50

ETF 50.30 (1g) Application (new)

ETF 50.32 Definitions (*expanded*)

ETF 50.34 Eligibility for a disability annuity (*renumbered from 50.30*)

ETF 50.36 Medical reports (*new*)

ETF 50.38 Cancellation of a disability annuity application (*renumbered from 50.31*)

Subchapter II — Disability Annuity

Create new subsection:

ETF 50.30 (1g) APPLICATION. An applicant shall establish that he or she meets all the requirements to receive benefits under this subchapter. An applicant shall apply for benefits by making an application in a form approved by the department. Note: Form ET-5302, "Disability Benefits Estimates and Application" can be obtained from the following address: Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931.

ETF 50.32 Definitions.

[Create and add the following new definitions to the existing definitions]

(1) "Applicant" means a person making a claim for a disability annuity under s. 40.63 and this subchapter.

(2) "Appointed" means a licensed, practicing physician designated by the department to conduct a medical disability examination.

(3) "Approved" has the same definition as "appointed" in this subchapter.

(4) “Disabled” has the meaning found in s. 40.63 (1) (b), Stats., and for a protective occupation participant meeting the requirements of s. 40.63 (4), Stats., it also has the meaning found in s. ETF 50.58 (1) (a).

(5) “Medically determinable impairment” has the meaning found in subch. III.

(6) “Medical report” means a report resulting from a medical examination completed by a physician approved or appointed by the department on the current form approved by the department for that purpose.

(7) “Non-qualifying medical report” means a medical report received by the department in which the physician determines that the applicant does not meet the definition of disabled under s. 40.63 (1) or (4), Stats.

(8) “Physician” has the meaning found in s. 448.01 (5), Stats.

(9) “Qualifying medical report” means a medical report received by the department in which the physician determines that the applicant meets the definition of disabled under s. 40.63 (1) or (4), Stats.

(10) “Unacceptable medical report” includes all of the following:

(a) A medical report received by the department from a physician who has not been appointed or approved by the department.

(b) A medical report received by the department from an individual who is not a licensed physician.

(c) A medical report received by the department from a physician that is based upon a medical examination that was completed more than six months prior to the date on which the department received the applicant’s disability benefits application; or

(d) A medical report received by the department from a physician in which the physician is unable to make a determination that the applicant does or does not meet the definition of disabled in this subchapter.

(e) Reports in excess of the limit on medical reports as determined in s. ETF 50.36 (6).

(f) A document in any form other than the disability medical report form approved by the department for the purpose, except that clinical or laboratory reports, or other medical records, attached to or supplementing a properly completed medical report shall be considered part of that medical report and evaluated with the report.

ETF 50.34 Eligibility for a disability annuity. *(section currently numbered 50.30 on this topic will be renumbered and placed here)*

ETF 50.36 Medical Report Requirements. (1) MEDICAL REPORT REQUIREMENTS.

(a) The department may receive at least two, but not more than three, qualifying or non-qualifying medical reports for the disability annuity applicant that have been completed by licensed, practicing physicians approved or appointed by the department in connection with a disability annuity application. Each report shall be completed on the department's approved form, which shall contain a physician's report and a signed or signature-stamped certification from the physician that certifies whether or not the applicant is disabled. A photocopy, e-mail attachment or facsimile of the original, completed department form may be submitted in lieu of the original document.

(2) SELECTION OF PHYSICIANS. (a) Each applicant may select one licensed physician of his or her choice, whom the applicant regards as familiar with the applicant's condition through previous treatment or examination of the applicant, to complete the first examination and disability medical report. The examination date shall be no more than six months prior to the date on which the department receives the applicant's disability annuity application.

(b) An applicant making a disability annuity application who resides outside of the State of Wisconsin is responsible for submitting proof of licensure for an out-of-state physician. Proof of licensure for out-of-state physicians shall be provided to the department in the form of a photocopy of the physician's medical license or through proof of licensure by another state.

(c) After the first completed medical report is received by the department, the department shall send the applicant a second disability medical report for completion. The department shall direct the applicant to have the second disability medical examination and report completed by one of the following:

1. One of up to three physicians who are appointed or approved by the department to conduct disability medical examinations and identified by name on a list provided to the applicant.
2. A physician licensed in a designated specialty.
3. A physician involved in the current treatment of the applicant.

(3) DISABILITY ESTABLISHED. (a) An applicant's disability shall be established through a disability medical report completed after a medical examination by a physician.

(b) The physician shall indicate if the applicant's disability is work-related and whether the disability caused the applicant to cease employment.

(c) Unacceptable medical reports will not be considered in any regard in connection with the application and will not be counted against the limit in sub. (2) (a).

(d) Additional documentation beyond a medical report supporting the physician's disability determination may be received by the department from the physician.

(e) At any time prior to the final decision on the application a physician may revise his or her medical report. The reasons for a change in a physician's certification shall be substantiated through additional supporting documentation received by the department from the physician.

(4) MEDICAL REPORT SUBMITTAL. The department may not accept a disability medical report with respect to an application for a disability annuity if the most recent medical examination upon which the report is based was completed more than six months prior to the application receipt date.

(5) QUANTITY OF MEDICAL REPORTS. (a) If more than three qualifying or non-qualifying medical reports are received by the department, the medical reports to be considered by the department for determining eligibility for a disability annuity shall be the first two, or three if necessary under sub. (7), which comply with sub. (5) and are reviewed in the chronological order of the date of the medical examinations upon which they are based, starting with the earliest medical examination date.

(b) Any medical reports received by the department in excess of those specified in par. (a) may not be considered when determining the applicant's current eligibility for a disability annuity and shall be considered unacceptable medical reports.

(6) CONFLICTING MEDICAL REPORTS. If an applicant submits two medical reports to the department, one of which is a qualifying report and one of which is a non-qualifying report, the department shall give the applicant an opportunity for a third medical examination by a physician appointed or approved by the department. However, if the two medical reports considered by the department are both qualifying medical reports or both non-qualifying medical reports, the department shall determine the applicant's eligibility without recourse to a third medical report.

(7) INCOMPLETE MEDICAL REPORTS. (a) A medical report on which the physician's certification signature or signature-stamp has been omitted, or on which an essential portion of the medical report form has not be completed by the physician, shall be deemed incomplete.

(b) When the department receives an incomplete disability medical report, the medical report shall be returned to the physician for completion and may, until and unless completed, be regarded as an unacceptable medical report. The medical report may be considered if completed and returned to the department so that it is received within 12 months of the disability annuity application receipt date.

(8) MEDICAL REPORTS AND BENEFIT REAPPLICATION. (a) A disability annuity applicant whose application was cancelled under s. 40.63 (8) (g) because the applicant did not complete the disability annuity application process within twelve months or an applicant who was denied a disability benefit may nevertheless reapply for a disability benefit if they still meet the eligibility requirements of s. 40.63 (1) and this subchapter as of the new application receipt date.

(b) The department may require the applicant to be examined by a previously appointed or approved physician.

(c) Medical reports based upon medical examinations completed more than six months prior to the department's receipt of the applicant's disability benefits application may not be considered when determining an applicant's current eligibility for a disability annuity.

(9) MEDICAL REPORT EXPENSES. (a) Except as provided in par. (b), the applicant shall be wholly responsible for any cost incurred for the medical examination or in providing copies of medical reports to the department in connection with the disability annuity application.

(b) The department shall, if requested in writing, pay the examining physician up to fifty percent (50%) of the charge to the applicant for a third medical examination and report, under the following circumstances:

1. The first medical report received by the department was either a qualifying medical report or a non-qualifying medical report.

2. The department approved a physician to make a second medical report who was not then involved in the treatment of the applicant.

3. The medical report received by the department from the physician approved by the department to make a second medical report refused to express an opinion on whether the applicant is disabled or stated that he or she is unable to express a conclusive opinion on whether the applicant is disabled.

4. The third medical examination and report is from another physician specifically approved by the department, in writing, for this purpose.

(10) ELECTRONIC SUBMITTAL. (a) Notwithstanding s. ETF 10.82 (2) (a) 5., the department may accept medical reports that are received by the department's facsimile machine in a complete and legible form without receipt of an original.

(b) Disability medical report forms may also be received by the department as an attachment to electronic mail provided the physician's electronic signature is appended or there is other evidence, satisfactory to the department, that the physician has personally certified the medical report.

ETF 50.38 Cancellation of a disability annuity application. *(Section 50.31 on this topic will be renumbered and included here)*

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***Draft Rule Revisions for LTDI Medical Report Requirements**

Draft as of September 3, 2003

*** NOTE: This is a draft of proposed changes to subchapter III of ETF Chapter 50, addressing medical report requirements for LTDI disability annuity applications. This draft is for board discussion purposes only. It includes notes in *italics* indicating the proposed changes and how the proposed language fits with current rule. Once the Department has received feedback on this draft from all the Boards, the text will be reformatted in appropriate rule-revision layout, as required.

Summary of Proposed Organization of Rule within Subchapter III of ETF Chapter 50

ETF 50.42	Definitions (<i>expanded</i>)
ETF 50.48 (2)	Medical reports (<i>repeal</i>)
ETF 50.50 (6)	Physician certification (<i>amended</i>)
ETF 50.51	Medical reports provisions (<i>new</i>)

Subchapter III — Long-Term Disability Insurance

ETF 50.42 Definitions.

[Create and add the following new definitions to the existing definitions]

(1) “Claim” means an application for LTDI benefits either by submission and receipt of the department’s claim form or telephonic filing with the department’s third party administrator.

(2) “Claimant” means a person making a claim for a long-term disability annuity under s. 40.63 and this subchapter.

(3) “Appointed” has the same definition as it does in subch. II.

(4) “Approved” has the same definition as “appointed” as it does in subch. II.

(5) “Disabled” has the same definition as it does in subch. II.

(6) “Medical report” has the same definition as it does in subch. II.

(7) “Non-qualifying medical report” has the same definition as it does in subch. II.

(8) “Physician” has the meaning found in s. 448.01 (5), Stats.

(9) “Qualifying medical report” has the same definition as it does in subch. II.

(10) “Unacceptable medical report” has the same definition as it does in subch. II.

Amend the following to read:

ETF 50.48 (2) Medical Reports. The department has received physician certifications in accord with s. ETF 50.51.

Amend the following to read:

ETF 50.50 (6) Medical Evidence. The requirements for supporting medical evidence are established as provided in s. ETF 50.51.

Create the following to read:

ETF 50.51 Medical Report Requirements. (1) DEFINITION. In this subsection, “disabled:”

(a) For purposes of an application for benefits under the special provisions of s. ETF 50.58 (1), this subsection, means an inability due to a medically determinable impairment, which is likely to be permanent, that results in an inability to perform the duties required of the particular protective occupation participant claimant’s position efficiently and safely.

(b) For all other applications under this subchapter, means totally and permanently disabled as defined in s. ETF 50.42 (9).

(2) MEDICAL REPORT REQUIREMENTS. (a) The Department may receive at least two, but not more than three, qualifying or non-qualifying medical reports for the

LTDI claimant that have been completed by licensed, practicing physicians approved or appointed by the department in connection with a LTDI claim. Each report shall be completed on the department's approved form, which shall contain a physician's report and a signed or signature-stamped certification from the physician that certifies whether or not the claimant is disabled. A photocopy, e-mail attachment or facsimile of the original, completed department form may be submitted in lieu of the original document.

(3) SELECTION OF PHYSICIANS. (a) Each claimant may select one licensed physician of his or her choice, whom the claimant regards as familiar with the claimant's condition through previous treatment or examination of the applicant, to complete the first examination and disability medical report. The examination date shall be no more than six months prior to the date on which the department receives the claimant's LTDI claim.

(b) A claimant making an application for LTDI benefits who resides outside of the State of Wisconsin is responsible for submitting proof of licensure for an out-of-state physician. Proof of licensure for out-of-state physicians shall be provided to the department in the form of a photocopy of the physician's medical license or through proof of licensure by another state.

(c) After the first completed medical report is received by the department, the department shall send the claimant a second LTDI medical report for completion. The department shall direct the claimant to have the second medical examination and report completed by one of the following:

2. One of up to three physicians who are appointed or approved by the department to conduct disability medical examinations and identified by name on a list provided to the claimant.

2. A physician licensed in a designated specialty.

3. A physician involved in the current treatment of the claimant.

(4) **DISABILITY ESTABLISHED.** (a) A claimant's disability shall be established through a disability medical report completed after a medical examination by a physician.

(b) The physician shall indicate if the claimant's disability is work-related and whether the disability caused the applicant to cease employment.

(c) Unacceptable medical reports will not be considered in any regard in connection with the claim and will not be counted against the limit in sub. (2) (a).

(d) Additional documentation beyond a medical report supporting the physician's disability determination may be received by the department from the physician.

(e) At any time prior to the final decision on the claim, a physician may revise his or her medical report. The reasons for a change in a physician's certification shall be substantiated through additional supporting documentation received by the department from the physician.

(5) **MEDICAL REPORT SUBMITTAL.** The department may not accept a disability medical report with respect to a claim for LTDI benefits if the most recent medical examination upon which the report is based was completed more than six months prior to the LTDI claim receipt date.

(6) QUANTITY OF MEDICAL REPORTS. (a) If more than three qualifying or non-qualifying medical reports are received by the department, the medical reports to be considered by the department for determining eligibility for LTDI benefits shall be the first two, or three if necessary under sub. (7), which comply with sub. (5) and are reviewed in the chronological order of the date of the medical examinations upon which they are based, starting with the earliest medical examination date.

(b) Any medical reports received by the department in excess of those specified in par. (a) may not be considered when determining the claimant's current eligibility for LTDI benefits and shall be considered unacceptable medical reports.

(7) CONFLICTING MEDICAL REPORTS. If a claimant submits two medical reports to the department, one of which is a qualifying report and one of which is a non-qualifying report, the department shall give the claimant an opportunity for a third medical examination by a physician appointed or approved by the department. However, if the two medical reports considered by the department are both qualifying medical reports or both non-qualifying medical reports, the department shall determine the claimant's eligibility without recourse to a third medical report.

(8) INCOMPLETE MEDICAL REPORTS. (a) A medical report on which the physician's certification signature or signature-stamp has been omitted, or on which an essential portion of the medical report form has not be completed by the physician, shall be deemed incomplete.

(b) When the department receives an incomplete disability medical report, the medical report shall be returned to the physician for completion and may, until and unless completed, be regarded as an unacceptable medical report. The medical report

may be considered if completed and returned to the department so that it is received within 12 months of the LTDI claim receipt date.

(9) MEDICAL REPORTS AND BENEFIT REAPPLICATION. (a) A disability annuity claimant whose application was cancelled under s. 50.48 (5) because the claimant did not complete the LTDI benefit application process within twelve months or a claimant who was denied a LTDI benefit may nevertheless reapply for a LTDI benefit if they still meet the eligibility requirements of this subchapter as of the new LTDI claim receipt date.

(b) The department may require the claimant to be examined by a previously appointed or approved physician.

(c) Medical reports based upon medical examinations completed more than six months prior to the department's receipt of the claimant's LTDI claim may not be considered when determining a claimant's current eligibility for a LTDI benefit.

(10) MEDICAL REPORT EXPENSES. (a) Except as provided in par. (b), the claimant shall be wholly responsible for any cost incurred for the medical examination or in providing copies of medical reports to the department in connection with the LTDI claim.

(b) The department shall, if requested in writing, pay the examining physician up to fifty percent (50%) of the charge to the claimant for a third medical examination and report, under the following circumstances:

1. The first medical report received by the department was either a qualifying medical report or a non-qualifying medical report.

2. The department approved a physician to make a second medical report who was not then involved in the treatment of the claimant.

3. The medical report received by the department from the physician approved by the department to make a second medical report refused to express an opinion on whether the claimant is disabled or stated that he or she is unable to express a conclusive opinion on whether the claimant is disabled.

4. The third medical examination and report is from another physician specifically approved by the department, in writing, for this purpose.

(11) ELECTRONIC SUBMITTAL. (a) Notwithstanding s. ETF 10.82 (2) (a) 5., the department may accept medical reports that are received by the department's facsimile machine in a complete and legible form without receipt of an original.

(b) LTDI medical report forms may also be received by the department as an attachment to electronic mail provided the physician's electronic signature is appended or there is other evidence, satisfactory to the department, that the physician has personally certified the medical report.