

Office of Internal Audit

Duty Disability Program Audit



February 16, 2024

Executive Summary

We completed an audit of the Duty Disability (DD) program processes that are managed by the Disability Programs Section (DPS) of the Benefit Services Bureau within the Division of Benefits Administration. This audit was completed in accordance with the fiscal year 2024–2025 Biennial Audit Plan to evaluate the design and operating effectiveness of internal controls over the DD program. Approximately 1,000 recipients receive this benefit totaling around \$3.3 million each month.

Our audit focused on DD applications received where a decision was made from Jan. 1, 2022–Sept. 30, 2023. We identified a total of 34 applications processed during our audit period. We also reviewed the annual income review, annual adjustment process, Access database folder security, and Access database update of the Benefit Payment System (BPS).

Overall, we found some of the areas to be operating effectively with the DD program processes such as staff following well documented procedures, and appropriate secondary reviews were in place. However, we identified a few opportunities for improvement related to these processes to obtain greater internal controls and operational efficiency. Specifically, we provided the following recommendations:

- Ensure that all DD recipients receive the appropriate annual adjustment.
- Update certain income offset rules to ensure that the rules are not being exploited.
- Ensure that the overpayment schedule is consistent across various ranges and that ETF is increasing its monthly collections.
- Change state statute to make this program less complex, less administratively burdensome to implement and maintain, and easier to maintain its integrity.

Audit Objective and Scope

The audit objective was to review the DD program processes to determine if they were operating efficiently and effectively and in compliance with law. The scope of our review was any application processed where a decision was made from Jan. 1, 2022–Sept. 30, 2023.

Our audit was conducted in conformance with the International Standards for the Professional Practice of Internal Auditing.

We excluded from our review the financial statement and actuarial valuation report of the DD program and other disability programs like Long-Term Disability Insurance (LTDI) and Disability Annuity under Wis. Stat. § 40.63.

Background

Program Information

DD is a nontaxable income replacement program that provides a lifetime benefit to protective occupations who are permanently disabled while injured performing their protective duties or have contracted a disease due to their occupation (i.e., presumptive disability). Death benefits may be payable to the member's spouse, domestic partners in limited circumstances, and children under age 18. The benefit is not based on the member's WRS account, as it is not a pension. This benefit is completely funded by the employer. Wis. Stat. § 40.65 and Wis. Admin. Code Ch. ETF 52 establish the rules for the DD program.

Presumptive disabilities are presumed to have been caused by employment. A firefighter whose disability is due to heart or respiratory problems and worked at least five years, or due to cancer and worked at least ten years. Correctional officers, emergency medical service providers, firefighters, or law enforcement officers whose disability is due to an infectious disease as defined by Wis. Stat. § 891.453¹.

To apply for DD, the member must complete an application. Two physicians licensed to practice in Wisconsin must certify the member's disability occurred while working or contracted a disease because of their job and that the disability is likely to be permanent. One of the physicians must be a specialist in the disability. ETF will also contact the member's employer to certify that the member was injured while working or contracted a disease because of their job. In addition, the employer must indicate that the disability caused the applicant to retire, be permanently assigned to light duty, have a permanent reduction in base pay or position, or adversely affected promotional opportunities. If the member's employer denies the request, the member can appeal.

¹ Infectious disease includes: the human immunodeficiency virus, acquired immunodeficiency syndrome, tuberculosis, hepatitis A - D, diphtheria, meningococcal meningitis, methicillin-resistant staphylococcus aureus, and severe acute respiratory syndrome.

Benefits are paid to members based on their monthly salary² as of their qualifying date³. State employees receive 80 percent of their monthly salary and local government employees receive 75 percent. For local government employees, they receive a five percent increase if they qualify for a disability benefit from the WRS or social security. Also, a benefit may decrease by five tenths of one percent per month if the member has a certain number of years of service⁴.

Annually, DD recipients are required to report earnings information and may be required to provide their federal income tax return and supporting documents. Benefits will be suspended and/or terminated if the recipient does not submit earnings information.

Unlike some other disability programs administered by ETF, there is no requirement for medical evidence stating the member is still disabled (i.e., the only time required is during the application process).

The monthly benefit is offset and reduced for income the member receives from social security benefits, unemployment compensation, workers' compensation, WRS retirement, separation, or disability benefits, and earnings from the same employer are offset dollar-for-dollar. Earnings from other employers and self-employment income are offset using a tiered approach. If the member has earnings from any of these sources and did not setup an offset, they will owe ETF for these earnings when staff complete the annual earnings review. DPS staff will send the member an overpayment letter notifying them of the amount and what their monthly deduction is unless they contact ETF to adjust it.

The recipient's monthly benefit is annually increased in January by the national salary index determined by the Social Security Administration or the Core Trust Fund (CTF) annuity adjustment. If the salary index or CTF annuity adjustment are negative, the recipient receives no adjustment. Which adjustment the recipient receives is dependent on their age and other disability programs they are receiving that ETF administers. If receiving a death benefit, the adjustment is dependent on the type of disability and when it occurred.

System Information

Administration of the DD program involves several manual calculations and processes, with data residing in multiple ETF systems.

- Employment and WRS account information is obtained from the Wisconsin Employee Benefits System (WEBS).

² Including overtime if it is regular and dependable and paid for hours worked beyond the member's normal work schedule.

³ The date on which the member's work-related disability causes them to have a permanent reduction in base pay or position, be assigned to light duty, retire, or causes promotional opportunities to be adversely affected.

⁴ If the member has over 25 years of service and terminated employment and not approved for a WRS disability or LTDI on the date of application. If the member has over 30 years of service and has not terminated employment or has been approved for a WRS disability or LTDI on the date of the application.

- DD payments are made through BPS.
- ETF created a Microsoft Access database to maintain benefit and demographic information and run part of this program like the annual adjustment process.
- OnBase is used to store specific member information related to their application, annual adjustment letter, annual income review, etc.

The Access database is secured on ETF's shared network drive within a restricted access folder. WEBS, BPS, and OnBase are separate ETF systems with separate security settings, and a review was outside the scope of this audit.

Results and Recommendations

Positive Results

We found various templates and procedure documents available for staff to use throughout the processes easy to follow and understand. One staff prepares the information and at least another reviews the applications approved or denied, initial benefit calculations, and overpayment calculations. The Access database is backed up weekly and access to the folders where the database is maintained was restricted. The procedural document explaining the various steps of how the Access database information updates BPS was thorough and easy to follow and understand.

Findings, Recommendations, and Management Responses

1. Annual Adjustments

Finding

Staff completed the annual adjustments like they have for the last 30+ years based on an interpretation of Wis. Stat. § 40.65 (6). Staff were applying Wis. Stat. § 40.63 (1)⁵ to also mean the LTDI program⁶ and not § 40.63 (4) Special Benefits since that was under a different subsection of the statute. However, LTDI is not part of § 40.63, even though the two programs are very similar, and a member receiving § 40.63 (4) Special Benefits is still receiving a benefit under § 40.63 (1). As a result, we found that seven members in our sample of 60 are impacted by this.

Recommendation

We recommend that the annual adjustment process be aligned in accordance with Wis. Stat. § 40.65 (6).

Significance: High

⁵ A disability retirement benefit paid to eligible Wisconsin Retirement System employees who become disabled and are unable to work until normal retirement age.

⁶ Many of the rules for LTDI were derived from the benefit under Wis. Stat. § 40.63, but it was authorized under Wis. Stat. § 40.03 (1)(i) and created under Wis. Admin. Code Ch. ETF 50.

Management Response

Management acknowledges that the statutes and rules are reasonably subject to varying interpretations but disagrees with this recommendation to change the current process. Both section 40.65 and the LTDI program were created in a way to allow ETF flexibility in administering these benefits. The intent of LTDI was to closely parallel and replace the section 40.63 disability retirement program. Also, the language in 40.65 (6) was ambiguous as to its applicability to 40.63 (4) disability claims and required interpretation by ETF.

The current annual adjustment process for duty disability is aligned with statutes and administrative rules in a logical way, resolving ambiguity in statute and rule by recognizing this intent. The method for annual duty disability adjustments for a member also receiving LTDI benefits is one example. The work unit has been consistently applying the current method of annual adjustments for more than 30 years.

Staff will update the documentation for annual adjustment procedures and database processes.

Responsible Staff

Jim Guidry

Completion Date

November 30, 2024

2. Annual Income Review

Finding

In our sample testing, we identified one instance where the member's business was providing services to a client for several months throughout the year based on the invoice provided. However, the client was only paying the member once a year, resulting in only the month the payment was received being offset⁷. In addition, we identified one member who had a business in their name the year the application was filed but then switched it to their spouse the following year, which appears to take advantage of the rule that only self-employment income from a business in the member's name is offset.

Recommendation

We recommend the following enhancements to reduce the ability where rules are being used to take advantage of case law that restricts lump sum offsets to the month of receipt only:

⁷ Income is offset in the month received and can never reduce the recipient's DD payment below zero and there is no carryover of offsets.

- Determine if administrative code and/or statute can be adjusted for when a member has the ability to decide when a payment is received and ensure that the payment is made within a reasonable timeframe of when the services were provided. In addition, consider defining self-employment income in statute and/or administrative code.
- Add a question to the ET-5910 form⁸ asking the member if they worked for their partner's or an affiliate's business. In addition, have the statute and/or administrative code changed to include language that if the member works for their partner's or an affiliate's business that it be subject to the offset based on a reasonable wage rate of someone doing a similar job, or the percentage of time they worked towards the profit.

Significance: High

Management Response

Management agrees with this recommendation. Staff will work with the Office of Legal Services to determine if a legislative solution can be crafted to address the sufficiency of current income offsets under the program where these lump sum payments occur.

In 1998, ETF made a number of updates to administrative rules (CR 98-050) to address the Wisconsin Supreme Court's decision in *Coutts v. Wisconsin Retirement Bd (Coutts)*. One of the court's rulings in *Coutts* impacted ETF's ability to carry over worker's compensation payments until the entire worker's compensation benefit had been used to reduce duty disability benefits. In doing so, the court included all earnings and benefits as subject to be offset only in the month paid. Since DPS staff have been following case law since the Court decided *Coutts*, any remedy to depart from *Coutts* would require a board-approved statute change.

Management agrees with amending ET-5910 to ask the member if they worked for family-related business. However, given the rarity of the occurrence and the varying circumstances under which these situations can occur, the information would be evaluated on a case-by-case basis to determine if any follow up is recommended. Staff will also work with OLS to see if a legislative solution can be developed that would ensure that member income is accurately reported by members.

Responsible Staff

Jim Guidry

Completion Date

November 1, 2024

⁸ The annual income statement form the recipient completes and returns to ETF listing their income for the specified year.

3. Payment Schedule

Finding

ETF has an accounts receivable policy that was last updated and approved by the Agency Management Council in December 2020. As part of this policy, the appendix contains a recommended guide for Payment Plan Options that has been the same since at least 2013. The recommended monthly payment starts at \$100 for anyone owing between \$100 - \$999.99 and then increases to \$150 for anyone owing between \$1,000 - \$1,999.99. However, the increase to the monthly payment is \$25 for the remaining ranges on the amount owed even though the range changes from \$999.99 to \$1,999.99.

Recommendation

We recommend that ETF adjust its Accounts Receivable Policy Payment Plan Options, so the recommended monthly payment amount increases to keep pace with inflation, and the recommended monthly payment change be more consistent with changes in the overpayment amount.

Significance: Low-Medium

Management Response

We will review and consider making changes to the accounts receivable payment plan guidance which applies to the disability program as well as all other programs administered by ETF. However, we believe this is a lower priority and thus will occur as time permits. To put this into perspective, the total duty disability insurance accounts receivable balance as of Dec. 31, 2023, was approximately \$350,000, which is less than .05% of the fund's balance. Thus, a change in the amount and timing of overpayments is not likely to have a significant impact on the program. Furthermore, the duty disability program is financially sound, with a 135% funding ratio as of Dec. 31, 2022.

Responsible Staff

Marie Ruetten, Gail Hinz

Completion Date

October 31, 2025

4. Complexity of Rules

Finding

While the DD program is an income replacement for protective occupation members who are injured while working, they are not required to qualify for workers' compensation, which is a program to provide payment for lost wages resulting from work-related injuries or disabilities. Furthermore, we found that some employers

were settling workers' compensation claims by approving their members' DD applications.

We also found the rules are very complex to manage and administer as every recipient is treated differently, especially when it comes to the annual adjustment process, what income is considered an offset, and what percentage of the monthly salary the recipient will receive. Currently, s-corporation and most rental real estate income is not subject to an offset. For the annual adjustment, the recipient might receive the national salary index or the CTF annuity adjustment depending on certain situations⁹. However, the assets of this program are invested in the CTF, so there is a misalignment between assets and liabilities. Finally, allowing a member to take a WRS separation benefit¹⁰ reduces the offset to their monthly payment and ability to ensure the program stays viable in the future.

Recommendation

We recommend that ETF work with the Legislature to make the following statutory changes to make this program less complex, administratively burdensome to implement and maintain, and to maintain its integrity:

- Consider if members should be required to apply for workers' compensation to receive duty disability.
- The percentage of the member's monthly salary used to calculate their benefit be the same and not adjusted if the member is receiving social security disability, disability under Wis. Stat. § 40.63, or years of service.
- Have all taxable income as determined by the Internal Revenue Code be subject to the offset, and all offsets be dollar-for-dollar.
- Have the annual adjustment be based on the Core Trust Fund's annuity adjustment no matter the members age or what other benefits they are receiving.
- Require periodic medical evidence that the member continues to be disabled.
- Consider not allowing members to take a WRS separation benefit who applied, or have been approved, for duty disability.
- Define how and when a benefit can be suspended.

Significance: High

Management Response

Management agrees with the recommendation to make the program less complex and administratively burdensome. BSB staff will research and analyze the recommended considerations and compare to previously proposed program

⁹ If the member is 60 years old and younger or is receiving a disability under Wis. Stat. § 40.63 (1), they receive the national salary index. Otherwise, the member receives the CTF annuity adjustment. If either is negative, the member receives no change.

¹⁰ Members who are receiving a DD benefit based on the cancer presumption are not allowed to take a separation benefit.

changes. Staff will work with OLS and ETF's Office of Budget and Management to update its previous legislative proposal to redesign the DD program and develop a related strategy for legislative support.

Responsible Staff

Jim Guidry, Gene Janke, LaShay Bishop

Completion Date

December 31, 2024

Process Improvement Considerations

We provided the following process improvement suggestions for management's consideration to improve the efficiency and effectiveness of the duty disability program processes:

- Determine if the new pension administration system (PAS) is going to be able to handle the current complexities of this program, especially when new systems are implemented that the more difficult programs with the least number of members are usually postponed. If PAS cannot handle it, evaluate the sustainability of continuing to run the program in an Access database that is currently not supported by Information Technology.
- Monitor Milwaukee City and County duty disability applications to determine future staffing levels.
- Consider changing the duplicate handling method in OnBase for the state (N9953) and federal (N9886) income tax returns to "Treat as Support" from "Create and Ignore" as this would allow the documents to automatically link to a member's account. In addition, for wage & tax statement documents (N9994), change the settings so these would also automatically link to the member's account. By making these changes, DPS staff would not have to go into each member's account and link the documents. Before making these changes, complete testing to ensure there are no unintended consequences.
- Consider reviewing Wis. Admin. Code ETF Ch. 52 for any technical updates, alignment with statute such as regular and dependable overtime, and any other process changes as the result of this audit.

Audit Methodology

The OIA conducted this audit by performing the following testing procedures:

- Applications – We selected and tested eight applications from a total population of 34 that were received and where a decision was made to approve or deny the application during our audit period.

- Annual Adjustment – We tested a sample of 60 recipients who received an annual adjustment in January 2023 of either the national salary index from the Social Security Administration or the Core Trust Fund annuity adjustment.
- Annual Income Review – We reviewed the 2021 income review process by selecting 60 recipients to verify they completed the necessary form, provided their federal income tax return, if applicable, and that DPS staff reviewed the information.
- Access Database Backups and Access – We verified that the Access database was being backed up and that access to folders where the information was stored was appropriately restricted.
- Access Database to BPS Reconciliation – Twice a year the Access database updates BPS. We reviewed one of these updates to ensure staff followed internal procedures and completed the necessary reconciliations.