

STATE OF WISCONSIN
Department of Employee Trust Funds
David A. Stella
SECRETARY

801 W Badger Road
PO Box 7931
Madison WI 53707-7931

1-877-533-5020 (toll free)
Fax (608) 267-4549
<http://etf.wi.gov>

CORRESPONDENCE MEMORANDUM

DATE: October 13, 2011
TO: Group Insurance Board
FROM: David H. Nispel, General Counsel
SUBJECT: The ETF Appeals Process Prior to Boards Receiving the Appeal


I. Introduction

- a) Ch. ETF 11, Wis. Admin. Code, Ch. 40, Wis. Stats., and other ETF administrative rules
- b) Generally, "Appeal" means the review of a determination made by the department conducted by a board under s. 40.03 (1) (j), (6) (i), (7) (f), or (8) (f), Wis. Stats.
- c) "Direct Appeal" relates to an employer's determination
- d) Nature of appeal determines which board hears the case (For GIB, s. 40.03 (6) (i))
- e) Common complaint/appeal issues
- f) Customer service project (ETF's plan to resolve disagreements, complaints and appeals at the most appropriate level)
- g) Attachment: Reducing Complaints and Appeals and Improving Customer Service

II. Independent Review Organizations (IRO)

- a) Not administered by ETF
- b) Attachments: OCI Fact Sheet and Ombudsperson Fact Sheet
- c) Requested (or not) by participant
- d) What is an independent review
- e) Types of disputes decided by IRO (some examples)
 - Medically necessary
 - Experimental
 - Rescission of health policy
- f) If participant pursues an IRO no option for ETF review or appeal

Reviewed and approved by Robert J. Conlin, Deputy Secretary.


Signature

10/21/11
Date

Board	Mtg Date	Item #
GIB	11.8.11	3A

III. Informal Review Process Conducted by ETF

- a) Concerns of Wisconsin Retirement System (WRS) member often resolved without a formal appeal being filed
 - ETF Ombudsperson Services
 - Special consultant to ETF Deputy Secretary
 - Settlement authority of the ETF Secretary
 - Settlement authority of supervisors and managers
- b) Appellant and Department discuss whether the appeal can be resolved informally
- c) If informal resolution is not possible, appeal is referred to Division of Hearings and Appeals

IV. ETF Appeals Process: The Hearing Examiner

- a) Determine the parties and the issues for each appeal
- b) Conduct the pre-hearing conference and evidentiary hearing, receive relevant evidence at the hearing, rule on all objections and motions, issue the proposed decision
- c) ETF has proposed changes to Wis. Admin. Code ETF 11 (Administrative Rule, CR-11-044)
 - Additional duties and clarify duties

V. ETF Appeals Process: The Prehearing Conference

- a) Identify the specific issues to be resolved and any factual and legal disputes
- b) Identify witnesses including any expert witnesses
- c) Discuss reaching agreement on a Stipulation of Facts and relevant exhibits
- d) Discuss authority of the boards to hear and decide issues in the appeal

VI. ETF Appeals Process: The Hearing

- a) Burden of proof rests with the appellant; presents case first
- b) Testimony of witnesses and receipt of other relevant evidence (exhibits, Stipulation of Facts)
- c) Rulings made on evidence offered at the hearing: what is admissible, what is hearsay, when objections are sustained or overruled
- d) Record of the hearing is developed
 - Stipulation of Facts
 - Exhibits admitted and not admitted into evidence
 - Transcripts (electronic or paper)

VII. ETF Appeals Process: Briefs Filed Following the Hearing

- a) Parties have opportunity to file briefs or letters
 - Reference to the evidence offered at the hearing
 - Reference to the laws supporting arguments made
 - Cannot contain new evidence or documents not previously offered at the hearing
- b) Briefs become part of the appeal record

VIII. ETF Appeals Process: The Proposed Decision by Hearing Examiner

- a) Findings of Fact, Conclusions of Law, Order
- b) Parties may file objections to the proposed decision (become part of record)

IX. Closing

- a) Board staff provides appeal record to each board member
- b) Board meets to consider the appeal

Attachments: Reducing Complaints and Appeals and Improving Customer Service
Fact Sheet on the Independent Review Process in Wisconsin
Ombudsperson Services Program Fact Sheet
Overview of Board's Role in Deciding Administrative Appeals



Reducing Complaints and Appeals **and Improving Customer Service**

- Identification of Common Sources of Complaints and Appeals
- Roles and Responsibilities
- Overview of the Appeals Process

By David Nispel

Identification of Common Sources of Complaints and Appeals

Part One

Common Complaint/Appeal Issues

- Beneficiary designation forms.
- What constitutes WRS earnings.
- Health insurance coverage disputes.
- Disability Appeals—particularly where the employer will not certify.
- ICI and Disability offsets.
- Category of employment.
- Participation in the WRS.
- Eligibility for benefits.
- Overpayment of benefits.
- Life insurance coverage.
- Annuity calculation.
- Separation Benefit.
- Retaliation, discrimination, negligence by staff and/or health care providers.
- Misinformation from staff and third party administrator.
- Mistreatment by staff or third party administrator.

Roles and Responsibilities

Part Two

Role of the ETF Ombuds Office

- The Ombudsperson Services Program was created in 1991 to assist participants with insurance problems.
- Participants who have completed their health plan's grievance process, or contacted the disability program administrator, and remain dissatisfied with the outcome may contact an Ombudsperson for assistance.
- Examples of complaints at this level include denials of benefits or referrals, incorrect administration of benefits, and enrollment and eligibility issues. Acting as a neutral third party, the Ombudsperson works to resolve member issues by mediation between the Plan and the member. Advocates for resolution of member benefits and issues.
- An Ombudsperson can help:
 - When a prior authorization request has been denied.
 - When claims have not been processed correctly.
 - When you have been told that you have no insurance coverage.
 - If you would like to know how to file a grievance.
 - If you receive a bill for services that have been covered in the past.
- If unsuccessful in resolving the participant's complaint, the Ombudsperson provides a written explanation and advises the participant on subsequent appeal options.

Special Consultant to the Deputy Secretary: Independent Review Process

- Handles member disagreements, complaints, and appeals.
- Concerns of WRS member are often resolved without a formal appeal being filed.
- Regularly meets with ETF staff and managers in an effort to resolve a member's complaint or appeal.
- Regularly calls and meets with members, attorneys, employers, and health plans.
- Appellant and department discuss whether the disagreement, complaint, or appeal can be resolved informally.
- If informal resolution is not possible, the appeal is referred to Division of Hearings and Appeals.
- This position is critical to resolving issues raised by members before and after complaints and appeals are filed. It should be involved early on in ETF's efforts to resolve issues.

Legal Services Office

- Provides legal assistance to the Office of the Secretary, managers and staff as well as the several boards attached to the Department.
- Represents ETF in administrative appeals. General Counsel is involved in the prehearing conference and hearing and prepares ETF witnesses for testimony at the hearing.
- Shares documents with appellants and inform appellants what documents are shared as a normal part of the appeals process.
- Prepares a draft Stipulation of Facts with exhibits.
- Prepares legal briefs.
- Responds to public records requests from appellants (very common now).
- Prepares a "Lessons Learned" memo after each Decision; schedules staff meeting.
- A Webcast titled "Administrative Appeal Process" by David Nispel (on ETF's website) is designed to help members understand the administrative appeals process as it relates to the Department of Employee Trust Funds and Wisconsin Retirement System benefits. Topics include how and when to file an appeal, the sequence of the hearing process, and concludes with the final decision notification.

Role of Hearing Examiner

- The hearing examiner (also called administrative law judge) is an independent—impartial person employed by the Division of Hearings and Appeals at the Department of Administration.
- Wis. Admin. Code ETF 11.04 (4) POWERS. In addition to other powers expressly granted or delegated to the hearing examiner by this chapter, the hearing examiner may:
 - (a) Administer oaths.
 - (b) Issue, quash and enforce subpoenas.
 - (c) Rule on offers of proof and receive relevant evidence at hearing.
 - (d) Take a deposition authorized by this chapter.
 - (e) Dispose of procedural requests or similar matters.
 - (f) Limit testimony to only those matters which are disputed.
 - (g) Rule on all objections and motions made prior to issuance of the proposed decision.
 - (h) Require briefs.
- Wis. Admin. Code ETF 11.04 (5) DUTIES. The hearing examiner shall have the following duties:
 - (a) The hearing examiner shall conduct the hearing, and any pre-hearing conference.
 - (b) For purposes of proceeding to a hearing, the hearing examiner shall determine the parties having a substantial interest in the appeal. The hearing examiner shall exclude as a party any person not having a substantial interest in the issues raised.
 - (c) When authorized by this chapter or by motion of the board, the hearing examiner shall prepare the final decision in the form required by this chapter.
 - (d) Except when authorized to make the final decision of an appeal, the hearing examiner shall prepare a proposed decision for the consideration of the board.
 - (e) A hearing examiner who receives an ex parte communication, other than a communication described in s. 227.50 (1) (b) through (e), Stats., shall make a record of the violation, and notify all parties.
- Wis. Admin. Code ETF 11.04 (7) FINAL DECISION-MAKING AUTHORITY. The hearing examiner shall make the final decision of the board only if authority to make the final decision is expressly delegated to the examiner in this chapter or if final decision making authority in a particular appeal is granted in a motion adopted by the board.
- Wis. Admin. Code ETF 11.04 (8) EXAMINER'S FILE. In the course of presiding over the appeal, the hearing examiner shall maintain the official record of the appeal, as well as filing correspondence to the examiner relating directly to the appeal but not part of the record.

- Wis. Admin. Code ETF 11.08 Final disposition by hearing examiner.
 - Identifies those circumstances in which the hearing examiner issues a final decision.

- Wis. Admin. Code ETF 11.09 (1) Proposed Decision.
 - Issued by the hearing examiner.
 - Identifies the contents of the proposed decision.
 - e.g. findings of facts and conclusion of law

- Proposed changes in Wis. Admin. Code ETF 11 – Administrative Rule.
 - Additional duties
 - Limitations on board remedies
 - Expedited appeal process

Role of DOJ Assistant Attorney General

- At Board meeting: an Assistant Attorney General provides summary of case and a recommendations for deciding the appeal.
- Wis. Admin. Code ETF 11.11 Counsel for the board. (1) In accordance with s. 40.03 (3), Stats., board staff shall arrange for legal counsel to advise the board during its consideration of a final decision.
 - (2) Any legal counsel asked to represent the board under sub. (1) shall fully disclose any real or apparent conflict of interest to the board chair and state whether counsel is able to render objective advice to the board. The board chair may waive the conflict on behalf of the board.
 - (3) Counsel appointed under sub. (1) shall provide legal representation to the board including all of the following:
 - (a) Advising the board during its deliberations and making specific recommendations for action by the board.
 - (b) Drafting findings of fact and conclusions of law.

Settlement Authority of the ETF Secretary

- Wis. Stat. § 40.03 (2) (m) provides the Secretary's broad settlement authority. That section indicates the Secretary: "Shall have all other powers necessary to carry out the purposes and provisions of this chapter, except as otherwise specifically provided by this chapter." Two principal purposes of the Public Employee Trust Fund are to "aid public employees in protecting themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident" (see Wis. Stat. § 40.01 (1)) and "ensuring the fulfillment at the lowest possible cost of the benefit commitments to participants" (see Wis. Stat. § 40.01 (2)).
- Wis. Stat. ch. 40 also list two examples of the Secretary's specific settlement authority. Wis. Stat. § 40.03 (2) (v) provides that the Secretary; "May settle any dispute in an appeal of a determination made by the department that is subject to review ... but only with the approval of the board having the authority to accept the appeal." Wis. Stat. § 40.03 (2) (w) states: "If the secretary determines that an otherwise eligible participant has unintentionally forfeited or otherwise involuntarily ceased to be eligible for any benefit provided under this chapter principally because of an error in administration by the department may order the correction of the error to prevent inequity." In the latter situation, the Secretary submits a quarterly report to the ETF Board.
- Wis. Stat. § 40.03 (2):
 - (v) May settle any dispute in an appeal of a determination made by the department that is subject to review under sub. (1) (j), (6) (i), (7) (f), or (8) (f), or s. 40.80 (2g), but only with the approval of the board having the authority to accept the appeal. In deciding whether to settle such a dispute, the secretary shall consider the cost of litigation, the likelihood of success on the merits, the cost of delay in resolving the dispute, the actuarial impact on the trust fund, and any other relevant factor the secretary considers appropriate. Any moneys paid by the department to settle a dispute under this paragraph shall be paid from the appropriation account under s. 20.515 (1) (r).
 - (w) If the secretary determines that an otherwise eligible participant has unintentionally forfeited or otherwise involuntarily ceased to be eligible for any benefit provided under this chapter principally because of an error in administration by the department, may order the correction of the error to prevent inequity. A decision under this paragraph is not subject to review. The secretary shall submit a quarterly report to the employee trust funds board on decisions made under this paragraph.

Overview of the Appeals Process

Part Three

What is an Appeal

- Generally, "Appeal" means the review of a determination made by the department conducted by a board under Wis. Stat. §§ 40.03 (1) (j), (6) (i), (7) (f), or (8) (f).
- "Direct Appeal" relates to an employer's determination.
 - An appeal directly related to an employer's determination regarding two specific issues (the employer's decision regarding):
 - 1) Whether to report an employee as a member under the WRS.
 - 2) Category of employment (Teacher, Executive, General, Elected Official, Protective, etc.)
- A written determination made by ETF may be appealed to the Employee Trust Funds Board or one of the four other Boards attached to the ETF. The nature of the appeal determines which Board hears the case. For example, the Group Insurance Board would hear an insurance appeal.
- An appeal request must be in writing. The appeals coordinator must receive the written appeal request within 90 days of the date of the ETF determination. Appeals should be mailed to the following address: Appeals Coordinator, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931.
- Party to an appeal refers to a person with a substantial interest in the determination being challenged.
- Reference sources: Wis. Admin. Code ch. ETF 11, Wis. Stat. ch. 40, and other ETF administrative rules.

What is a Department Determination

- Not every decision made by ETF is a department determination.
- Obviously, ETF makes many decisions daily orally, by email, by letter, and during meetings with members or others.
- Wis. Admin. Code ETF 11.02 (8) "Determination made by the department" means a written finding, notification or decision of the department, applying law or contract terms to actual facts to determine a benefit, right, obligation or interest under ch. 40, Stats., including contracts authorized by ch. 40, Stats., of a person who is, or claims the status of, a participant, annuitant, beneficiary, employer, insured, insurer or deferrer.
- Appeal rights are included in each department determination.
- ETF policy is to issue a department determination no later than 90 days after a request is made by the WRS member, beneficiary or other person.
- The request for a department determination may follow the Ombudsperson Review, or the member may request a department determination as the first level of administrative review.

General Appeals Process

- Governed by Wis. Admin. Code ch. ETF 11.
- Hearing examiner from Division of Hearings and Appeals is involved and issues proposed decision.
- Board makes final decision.
- Appeals of board decision go to circuit court.

Separate Appeals Process for Duty Disability Claims

- Protective occupation employees may be eligible for duty disability benefits under Wis. Stat. § 40.65 if the disability is duty-related.
- Duty disability benefits may be payable if an employee has been injured while performing duties or contracted a disease due to the occupation. The disability must be work-related, permanent and cause a reduction in pay or position, assignment to light duty, retirement or adversely affect promotional opportunities within the service, if state or local employer rules, ordinances, policies or written agreements specifically prohibit promotion because of the disability.
- ETF makes a determination whether applicant is eligible for benefits.
- Typically, these appeals involve employer-employee disputes (e.g. employer contests that the disability is work-related) and ETF does not attend the hearing, but does file with DWD all documents used in making the ETF determination.
- A written notice of appeal must be filed with the Department of Workforce Development, Workers' Compensation Division. The appeal will follow the procedures outlined in Wis. Stat. §§ 102.16 to 102.26. An administrative law judge from DWD handles these appeals.
- Typically, ETF does not attend the hearing but provides documents to the ALJ and parties.
- Appeals of DWD decisions are filed with the Labor and Industry Review Commission.

Prehearing Conference

- The hearing examiner schedules the prehearing conference.
- The prehearing conference is an informal discussion (usually by conference call) between the parties regarding the appeal. Although there will be no testimony taken at the prehearing, the hearing examiner will expect the parties to be prepared to determine who the proper parties are, define issues to be resolved, identify factual and legal disputes, and discuss witnesses likely to be called.
- The hearing examiner and parties will discuss authority of the boards to hear and decide issues in the appeal.
- Typically the hearing examiner will direct the parties to stipulate to as many facts as possible prior to the actual hearing. A stipulation of facts provides a chronology of events, documents, correspondence and medical records. The purpose of the stipulation is to list facts the parties agree are true and to identify documents to be admitted into the record.
- Following the prehearing conference, the hearing examiner issues a memorandum summarizing the discussion between the parties, specifying the issues to be resolved and making any other appropriate orders. This memorandum will control the subsequent course of the appeal.

Hearing

- Hearings are held at the offices of the Division of Hearings and Appeals. A hearing is conducted in a manner similar to a trial, but without a jury. The hearing examiner oversees the hearing and rules on procedure, evidence and objections.
- Burden of proof rests with the appellant.
- Hearing consists of testimony of witnesses and receipt of other relevant evidence (exhibits, Stipulation of Facts).
- Each party may present testimony and evidence. Usually the party who files the appeal presents his/her testimony and evidence first. Each party is given the opportunity to call witnesses and ask questions (direct examination). Then the other parties may ask questions of the witnesses (cross examination). Finally, each party gets an opportunity to ask follow-up questions (redirect and re-cross examination).
- Rulings are made on evidence offered at the hearing: what is admissible, what is hearsay, when objections are sustained or overruled.
- Record of the hearing is developed
 - Stipulation of Facts
 - Exhibits admitted and not admitted into evidence
 - Transcripts (electronic or paper)
- A court reporter prepares a written transcript of each hearing.

Post Hearing Briefs (Written Arguments)

- Parties may file briefs to further argue the case.
- Briefs contain references to the evidence believed to prove the case.
- Briefs contain references to the laws believed to apply to the case.
- Briefs cannot contain additional evidence or documents not previously admitted into the hearing record.
- There are no rules regarding the length or formats of a brief.

The Proposed Decision

- The hearing examiner issues a proposed decision, but the Board does not need to adopt it, either in part or in full. The proposed decision is not entitled to deference by the Board.
- The hearing examiner may issue a final decision in specific types of cases, such as cases involving time-barred claims. The Board normally does not see these cases.
- Parties can file written objections to the proposed decision. Those objections become part of the hearing record and provided to the board.
- Wis. Admin. Code ETF 11.09 Proposed decision. (1) CONTENTS. The proposed decision shall be in the same form and comply with the same standards as is required for a final decision. If the hearing examiner concludes that the decision may depend upon the interpretation of an ambiguous statute, the proposed decision shall include the hearing examiner's basis for concluding that the statute is ambiguous as a matter of law and a recommended interpretation giving the same weight to the interpretations of the department, attorney general and administrative rules as is required for a final decision.
 - (2) COPY TO EACH PARTY. A copy of the proposed decision shall be mailed to each party or the party's attorney of record, with notice of the opportunity to file an objection and the manner and time limit for doing so.
 - (3) OBJECTIONS. Any party aggrieved by the proposed decision may file a written objection to the proposed decision within 20 days of the date of the notice of the proposed decision. The aggrieved party shall specify, in detail, the following: (a) Each provision of the proposed decision to which the party objects and the basis for each objection. (b) Each change the party requests the board to make in the proposed decision and the legal grounds for the change. If minor, the requested change may be described as a specific edit to the proposed decision. If extensive or major changes are requested, the party may attach a draft proposed decision, clearly marked as that party's draft, to that party's objections.
 - (4) ARGUMENT. A party filing objections to a proposed decision shall attach to the objections a written copy of any argument by the party in support of the objections. The board shall consider only written arguments, timely filed with the objection. The board shall not entertain oral argument.
 - (5) AGENDA. Board staff shall place the appeal on the agenda for the regular board meeting next following the expiration of the time limit for filing objections. Board staff shall provide each board member with a copy of the record, including the proposed decision and the timely filed objections to the proposed decision. If board members would have less than 7 calendar days to review the record, proposed decision and timely objections, or the board's agenda is already full, the appeal may instead be added to the agenda of the subsequent regular board meeting. Nothing in this subsection shall prevent the board from electing to hear an appeal case at a special meeting of the board.

Role of Boards

- There are five Boards of Trustees associated with the Wisconsin Department of Employee Trust Funds. The Boards set policy and review the overall administration of the benefit programs provided for state and local government employees.
- The five Boards are:
 - Employee Trust Funds Board
 - Teachers Retirement Board
 - Wisconsin Retirement Board
 - Group Insurance Board
 - Deferred Compensation Board
- Provide oversight of the initial decision making process—either that of the Department, or, in direct appeals, the participant's employer.
- Prior to the Board meeting, the board members and the board counsel:
 - Read the record.
 - Identify the specific issues to be resolved.
 - Identify factual and legal disputes.
- Review is on the record—Board does not take evidence or hear testimony.
- Wis. Admin. Code ETF 11.12 (5) CLOSED SESSION DELIBERATIONS. The board shall meet in closed session, in its quasi-judicial capacity to review the proposed decision of an appeal and take action on the appeal, as follows:
 - (a) Parties to the appeal and their attorneys of record may not be present during the closed session, except that board staff and advisory staff of the department who were not involved in the proceedings or in making the underlying departmental determination may be present at the discretion of the board.
- Board's powers to correct "unfairness" are very limited; ETF Board has limited equity authority and the other boards do not have equity authority.
- At the conclusion of the meeting, the Board announces the decision and:
 - Accepts the hearing examiner's proposed decision and order.
 - Accepts the hearing examiner's proposed decision and order with changes.
 - Adopts a different decision, or
 - Remands the appeal back to the hearing examiner for further action.

The Final Decision

- A copy of the final decision is sent to all parties (with notice of appeal rights).
- Wis. Admin. Code ETF 11.12 Final decision. (1) FORM. Final decisions, and proposed decisions to be considered by the board, shall be in writing and include:
 - (a) Findings of fact, consisting of a concise and separate statement of the ultimate conclusion upon each material issue of fact, without recital of evidence.
 - (b) Conclusions of law based on the factual findings.
 - (c) A list of names and addresses of all persons who are considered parties for purposes of judicial review.
 - (d) An order stating either that the department determination is affirmed or, where the department determination is not affirmed, remanding the matter to the department with instructions to take necessary action on the matter, consistent with the final decision. In the following cases, the decision shall include the specified additional orders and findings:
- Any party who disagrees with the final decision may appeal to the Dane County Circuit Court for review.
- A party has the right to petition the Board for a rehearing (Wis. Admin. Code ETF 11.14). A written petition for rehearing, naming the Board as a respondent, may be made within 20 days of the date of the notice.
 - May only be granted on the basis of material error of fact or law, or the discovery of new evidence which could not have been previously discovered by due diligence and is sufficiently strong to reverse or modify the Board's decision.
 - Petition must describe the particular alleged errors or the new evidence which is the basis of the request.
 - Does not suspend or delay the effective date of the Board's decision.

Judicial Appeal to Dane Circuit Court

- All appeals are heard by a circuit court judge in Dane County.
- Review is on the record—no additional gathering of evidence.
- The Board's findings and conclusions of law are typically entitled to some level of deference.
- Wis. Admin. Code ETF 11.15 Judicial review.
- Deadlines. Time to appeal to circuit court.
 - Final decisions of the WRB, TRB, GIB, and DC Bd are subject to judicial review as provided in Wis. Stat. § 227.53.
 - The petition for review is timely only if filed with the court and served upon the board within 30 days. The 30 day period commences on the day after the earlier of personal service upon the party or mailing of the board's final decision to all parties. However, if the party has requested a rehearing, the deadline for filing and serving the petition for review is 30 days after the application for rehearing is finally disposed of whether by action of the hearing examiner, board action or operation of law.
 - Final decisions of the employee trust fund board are subject to judicial review only by certiorari. The certiorari petition or complaint shall name the employee trust funds board as the respondent and shall be filed in Dane county, where the board is deemed to reside.

Customer Service Project

- Over the last several months, David Nispel and Steve Hurley have engaged in an in-depth review of ETF's ongoing efforts to provide quality customer service. Their work began with observations of ETF's complaint and appeals process.
- Interviewed several ETF staff and managers independently
- Interviewed a WPS attorney
- Reviewed Wis. Admin. Code ch. ETF 11 (Appeals)
- Identified contentious issues involving members, plans, employers, ETF
- Analyzed key activities from initial member contacts to the post-hearing period
- Identified common themes and topics based on interviews
- Identified common themes and topics from regular and contentious appeals
- Developed a list of conclusions and suggestions for discussion
- Identified actions that can be taken now and others that will require more time
- Identified improving customer service as the primary objective
- Linked suggested changes to ETF's Strategic Plan
- Made a presentation to the Leadership Team.
- Talked with managers about their observations and some of the activities that are being planned and others that are already underway.

Fact Sheet on the Independent Review Process in Wisconsin

OFFICE OF THE COMMISSIONER OF INSURANCE

PI-203 (R 01/2011)

This fact sheet provides general information on the independent review process in Wisconsin. If you have specific questions on how it may apply to your situation, please contact your insurance company or the Office of the Commissioner of Insurance (OCI).

As with any other product or service, you may some day have questions or complaints about your health insurance plan. You may be able to resolve a complaint by contacting the health plan's customer service department. You can also file a written grievance with the insurer. All insurance companies offering health benefit plans in Wisconsin are required to have an internal grievance process to resolve any complaint you may have with the plan. You may, at any time, contact OCI with your question or problem.

If you are not satisfied with the outcome of your grievance, a new law provides you with an additional way to resolve some disputes involving medical decisions. You or your authorized representative may request that an Independent Review Organization (IRO) review your health plan's decision.

What is an independent review?

The independent review process provides you with an opportunity to have your dispute reviewed by experts who have no connection to your health plan. You choose the IRO from a list of review organizations certified by OCI. The IRO assigns your dispute to a clinical peer reviewer who is an expert in the treatment of your medical condition. The clinical peer reviewer is generally a board-certified physician or other appropriate medical professional. In some cases, the IRO will also consult with an attorney or other insurance expert. The IRO has the authority to uphold or reverse the health plan's decision.

Who conducts the independent reviews?

The independent reviews are conducted by IROs that are certified by OCI. In order to be certified, the IRO must demonstrate that it is unbiased and that it has procedures to ensure that its clinical peer reviewers are qualified and independent.

What types of disputes can be decided through independent review?

There are several types of disputes eligible for an independent review.

An independent review is available whenever your health plan denies you coverage for treatment because it maintains that the treatment is not medically necessary or that it is experimental, including a denial of your

request for out-of-network services when you believe that the clinical expertise of the out-of-network provider is medically necessary. The treatment must otherwise be a covered benefit under the insurance contract. Also, the total cost of the denied coverage must exceed \$295.

An independent review is also available whenever your health plan denies you coverage for treatment on the basis of a preexisting condition exclusion. In addition, you may request an independent review if the insurer rescinds your health insurance policy or certificate. Rescission means that the insurer retroactively cancels your policy or modifies the terms of the policy because it maintains that you did not answer the health questions on the application for insurance completely and accurately. There is no minimum cost requirement for denials based on a preexisting condition exclusion or a rescission.

If you and your insurer disagree about whether or not your dispute is eligible for independent review, you may request that it be sent to the IRO. The IRO will decide if it has the authority to do the review.

What types of disputes are not eligible for independent review?

No health benefit plan covers all medical expenses. You may not request an independent review if the requested treatment is not a covered benefit. For example, if your policy specifically excludes coverage of weight loss treatment, your request to have the insurer cover your weight loss treatment would not be eligible for independent review, even if you believed that the treatment was medically necessary. In addition, if your dispute involves an administrative issue such as whether your premium was paid on time, it is not eligible for an independent review. However, you would be able to ask the insurer to review your concerns through its internal grievance process.

If you have coverage through Medicare, Medicaid, or another federal plan, or if you are covered through your employer's self-funded plan, you are not eligible to request the independent review described in this brochure. These plans generally have a different appeal process, which is explained in your member materials.

When can I request an independent review?

Whenever your insurer makes a coverage denial determination that is eligible for an independent review, it must provide you with information on your appeal rights, including its internal grievance procedures and your right to request an independent review. It must also explain how you can obtain additional information on its

internal grievance and independent review processes. In most cases, you will need to complete your health plan's internal grievance procedure before requesting an independent review.

How do I request an independent review?

After you receive the insurer's final decision on your grievance, choose an IRO from the list provided by the insurer. Then send a written request for independent review to the insurance company at the address provided in its grievance decision letter. The insurer must receive your request for an independent review within 4 months of the date the grievance procedure was completed.

Be sure to include:

- your name, address, and phone number,
- an explanation of why you believe that the treatment should be covered,
- any additional information or documentation that supports your position,
- if someone else is filing on your behalf, a statement signed by you authorizing that person to be your representative, and
- any other information requested by your insurer.

Your insurer should have provided you with a list of certified IROs and with detailed information on how to request a review with its written grievance decision.

What documents should I provide that will help the IRO make a determination?

You may provide the IRO any information that you think will support your case. This may include your medical records and test results, a letter from your physician or research articles from peer-reviewed medical journals.

What if I need care now?

Generally, you must complete your health plan's internal grievance procedure before requesting an independent review. However, you do not need to complete this process if both you and the insurer agree to proceed directly to independent review or if you need immediate medical care.

If you need immediate medical treatment and believe that the time period for resolving an internal grievance will cause a delay that could jeopardize your life or health, you may ask to bypass the insurer's internal grievance process. When you obtained your coverage, your health plan should have provided you with written information explaining the independent review process. You can also call the health plan's toll-free telephone number to request information on the independent review process and to request a copy of the list of certified IROs. When you have the information you need, send your request to the IRO at the same time you send it to the insurer. The IRO's medical director or other medical professional will review your request and decide if an immediate review is needed. If so, it will review your dispute on an expedited basis. If the IRO decides that your health condition does not require its immediate review of your dispute, it will notify you that you must first complete the internal grievance process.

Is there a cost involved?

There is no cost to you for requesting an independent review. Your health plan is required to pay the IRO's fees.

How long does the independent review process take?

The insurer must send all relevant medical records and other documentation used in making its decision and all of the documentation you sent to support your request to the IRO within five business days. The IRO then has five business days to review the information and to request any additional information it may need from the insurer or from you. After it receives the information it needs, the IRO has thirty business days to make its decision.

If the IRO determines that this time period could jeopardize your life or health, the insurer must send its documentation within one day and the IRO then has two business days to request any additional information. The IRO must make its decision within 72 hours after receiving all of the information it needs.

How does the IRO make its decision?

The IRO must consider all of the documentation and other information provided by you and by the insurer, including medical or scientific evidence, the applicable insurance contract and any legal bases. It may only reverse an insurer's denial based on an experimental treatment determination if it determines that the treatment has been approved by the FDA, and also that medically and scientifically accepted evidence clearly demonstrates that the treatment is proven safe and can be expected to produce greater benefits than the standard treatment without posing a greater adverse risk.

Does my health plan have to abide by the decision?

Yes, the decision of the IRO is binding.

What if I have more questions?

Your insurer's customer service department should be able to answer any questions you may have regarding the independent review process.

You may also contact OCI at the address, phone number, or electronic mail address below. OCI has a new brochure, *Consumer's Guide to Grievances and Complaints*, to help with the entire appeals process.

For information on how to file insurance complaints, call:

(608) 266-0103 (In Madison)
or 1-800-236-8517 (Statewide)

For your convenience a complaint form is included on OCI's Web site at:

oci.wi.gov/com_form.htm

Office of the Commissioner of Insurance
P.O. Box 7873

Madison, Wisconsin 53707-7873
E-mail: ociinformation@wisconsin.gov



State of Wisconsin

Ombudsperson Services Program

FACT SHEET 2011

PROGRAM OVERVIEW

- The Ombudsperson Services Program was created in 1991 to assist participants with insurance problems.
- Ombudspersons in the Department of Employee Trust Funds (ETF) advocate for participants and attempt to resolve Wisconsin Retirement System benefit program issues and complaints.
- Participants who have completed their health plan's grievance process, or contacted the disability program administrator, and remain dissatisfied with the outcome may contact an Ombudsperson for assistance.
- If unsuccessful in resolving the participant's complaint, the Ombudsperson provides a written explanation and advises the participant on subsequent appeal options.

Ombudspersons can be reached at the ETF Ombudsperson Assistance Line at (608) 261-7947 or toll free at 1-877-533-5020, extension 17947. You may also send an e-mail to Ombudsperson@etf.state.wi.us.

FREQUENTLY ASKED QUESTIONS

What should I do if I am concerned about my insurance plan or the administration of my benefits? First, contact your plan's customer service department. If you are unable to resolve your complaint informally with the plan, you may file a formal grievance with the plan. If you exhaust your appeal rights with the plan and the plan continues to uphold its denial, you will be notified of further rights that may apply to your situation. In addition, you may contact Ombudsperson Services for additional assistance or information.

What is an independent review? Depending on the nature of your complaint, you may have the right to request an independent review through an outside organization known as an Independent Review Organization (IRO). This option, which must be approved by the Office of the Commissioner of Insurance, becomes available when a plan has denied services as either not medically necessary or experimental.

How does requesting an independent review affect my administrative review rights at ETF? If you choose to have an IRO review the plan's decision, the outcome of the IRO review is legally binding on both you and the plan. Therefore, once an IRO decision has been made, you no longer have rights to an administrative review through ETF.

How can ETF help me if I disagree with my plan's grievance decision? As a member of the Wisconsin Retirement System, you have the right to request an ETF administrative review. To initiate a review by ETF, call or send us a letter requesting an ETF complaint form (ET-2405). The form can also be found on our Internet site at <http://etf.wi.gov/publications/et2405.pdf>.

ETF ADMINISTRATIVE REVIEW PROCESS

A participant must exhaust all levels of appeal through the plan before requesting an ETF administrative review. All complaints must be in writing.

Levels of ETF Administrative Review:

1. **File a Complaint with ETF's Ombudsperson Services.** This level allows the most latitude for problem resolution. Complaint examples at this level include denials of benefits or referrals, incorrect administration of benefits, and enrollment and eligibility issues. Acting as a neutral third party, the Ombudsperson advocates for participants and attempts to resolve complaints and disputes on their behalf.

If the Ombudsperson is unable to resolve a complaint in the member's favor, the member is notified of additional administrative review rights available.

2. **File a Request for Departmental Determination.** ETF has the authority to issue a departmental determination based on the language of the contract or applicable Wisconsin law. This is a more formal process than the Ombudsperson Review. The request for a departmental determination may follow the Ombudsperson Review, or the member may request a departmental determination as the first level of administrative review.
3. **Appeal to the Group Insurance Board (Board) via Administrative Hearing.** This is the final level of administrative review. A participant must receive a departmental determination before filing an appeal to the Board. The appeal process involves a pre-hearing to determine the issue(s) in dispute, followed by a formal hearing by a hearing examiner. The hearing examiner makes a recommendation to the Board, which the Board may or may not accept. The participant may choose to retain an attorney for this or any other level of appeal.

Level	Deadline to file a complaint
1. Complaint with Ombudsperson	Within <u>60 days</u> from the date of the plan's final decision.
2. Request for Departmental Determination	Within <u>60 days</u> from the date of the Ombudsperson's final letter to you.
3. Appeal to the Group Insurance Board	Within <u>90 days</u> from the date of the written determination.

CONTACTS RECEIVED BY OMBUDSPERSON SERVICES, 2007-2010

Benefit Year	Number of Contacts
2007	697
2008	1,284
2009	1,307
2010	1,183

Ombudsperson Services
 Inquiries and Complaints
 Department of Employee Trust Funds
 P.O. Box 7931 Madison, WI 53707-7931
 Toll Free: 1-877-533-5020, ext.17947
 Internet: <http://etf.wi.gov>

CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Date: November 8, 2011

To: Group Insurance Board Members

From: Charlotte Gibson
Assistant Attorney General

Subject: Overview of Board's Role in Deciding Administrative Appeals

I. The Board function in an appeal

- a) Quasi-judicial
- b) Closed session deliberation—parties not present during the deliberation
- c) Review on the record—Board does not take evidence or hear testimony
- d) Provide oversight of the initial decision making process—either that of the Department, or, in direct appeals, the participant's employer
- e) Can be a big part of a board member's service, or a not-so-big part, depending on number of appeals

II. Who are the parties?

- a) A person with a "substantial interest" in the issue to be decided
- b) Except for direct appeals, the Department is a party, but may choose not to participate
- c) In cases involving death benefits, the parties may include potential beneficiaries
- d) In cases involving insurance benefits, the third-party administrator or health insurance program may be a party

Board	Mtg Date	Item #
GIB	11.8.11	3A

III. The proposed decision.

- a) The hearing examiner issues a proposed decision, but the Board need not adopt it, either in part or in full. The proposed decision is not entitled to deference by the Board.
- b) The hearing examiner may issue a final decision in specific types of cases, primarily ones involving time-barred claims. The Board normally does not see these cases.

IV. The decisionmaking process.

- a) Prior to Board meeting: read the record, identify the specific issues to be resolved and any factual and legal disputes.
- b) At Board meeting: counsel provides summary of case and a recommendation for deciding the appeal
- c) Board discusses members' views of the facts and law at issue
- d) Problems of hearsay
 - i) what is hearsay?
 - ii) use in administrative proceedings
 - iii) substantial evidence standard
- e) Vote. Not all Board decisions are unanimous
- f) Board's powers to correct "unfairness" are very limited
- g) Options include remanding the appeal back to the hearing examiner to gather additional evidence that the Board finds is needed, or to consider a point of law that the parties did not address.

V. What must the final decision include?

- a) Findings of fact and conclusions of law. Should include facts establishing the Board's jurisdiction, including the date on which the appeal was filed

- b) A statement of the disposition of the appeal: whether the decision of the Department or employer is affirmed, reversed, or remanded for further proceedings

Parties to the appeal

VI. What happens once the final decision is drafted?

VII. What are the losing party's options after the final decision issues?

- a) Petition for re-hearing
- b) Judicial review in circuit court
 - i) Time to appeal
 - ii) All appeals heard by a trial judge in Dane County
 - iii) Review is on the record—no additional gathering of evidence
 - iv) The Board's findings and conclusions of law are typically entitled to some level of deference
- c) Appeal beyond the circuit court

VIII. What are the losing party's options after the final decision issues?