

Administrative Appeals Process

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Department of Employee Trust Funds



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Departmental Determination

If a Wisconsin Retirement System (WRS) member is unable to informally resolve a program issue or complaint, he/she must first request a Departmental Determination (DD) with the Department of Employee Trust Funds (ETF)

- First step in the WRS Administrative Appeal Process
- Must receive a DD before an appeal can be filed

What is an Appeal

An appeal is a formal written request for the review of a Departmental Determination made by ETF

An appeal is made to one of the five WRS governing boards:

- Employee Trust Funds Board
- Teachers Retirement Board
- Wisconsin Retirement Board
- Group Insurance Board
- Deferred Compensation Board

The nature of the appeal determines which board hears the case

What is a *Direct Appeal*?

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 - General, Executive/Elected Official, Teacher, Protective with Social Security, Protective w/o Social Security

Appeal is made “directly” to ETF Board (ETF does not make a determination)

Before Filing an Appeal

Consider the facts and law surrounding the case

ETF is required to administer benefit programs according to Chapter 40 of the Wisconsin Statutes and Administrative Rules pertaining to ETF

- ETF, the hearing examiner and the boards cannot make exceptions to the law
- Cannot make decisions because it seems “fair” when the law requires another action
- Terms and conditions of some programs are set by contract or administrative rule

Filing an Appeal

Appeals may be submitted on *Appeal Form (ET-4938)* or by letter

- If by letter, must include:
 - Name, address, WRS Member ID number
 - Identify the DD being challenged
 - Identify the factual and legal basis for the appeal and why you believe the DD is incorrect

Appeals must be received within 90 days of the date of the ETF determination

Department of Employee Trust Funds
P.O. Box 7931
Madison, WI 53707-7931

Use of this form is optional. A letter providing the same information is equally acceptable.

APPEAL FORM

Please print or type

EMPLOYEE INFORMATION	EMPLOYER INFORMATION
Member Identification Number	Name
Name	Address
Mailing Address	
City, State, Zip	City, State, Zip

I appeal the determination regarding my:

<input type="checkbox"/> Beneficiary Designation	<input type="checkbox"/> Category of Employment	<input type="checkbox"/> Final Annuity Calculation	<input type="checkbox"/> Forfeited Service
<input type="checkbox"/> Military Service	<input type="checkbox"/> Participation in the Wisconsin Retirement System	<input type="checkbox"/> Separation Benefit	<input type="checkbox"/> 40.63 Disability Benefit
<input type="checkbox"/> 40.65 Disability Benefit	<input type="checkbox"/> Income Continuation Insurance	<input type="checkbox"/> Long-Term Disability Insurance	<input type="checkbox"/> Health Insurance
<input type="checkbox"/> Life Insurance	<input type="checkbox"/> Wisconsin Deferred Compensation Program	<input type="checkbox"/> Other _____	

If health insurance is involved: name of insurance company: _____
Date of the determination letter (from the Department): _____

Mail appeals to:

Appeals Coordinator
Department of Employee Trust Funds
P.O. Box 7931
Madison WI 53707-7931

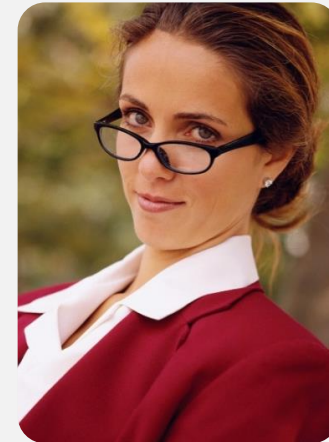
ET-4938 (REV 6/10)

Parties Involved In The Appeal

Party refers to a person with a substantial interest in the determination being challenged

Parties may include:

- ETF
- The WRS member
- Any person with an interest in the benefits of the WRS member
- The employer (or former employer)
- The insurance provider
- Others with a direct interest



Right To Be Represented

Members may choose to be represented by an attorney (not required)

If choosing an attorney to represent you:

- Any associated costs are your responsibility
- Don't delay! Look immediately
- If you need help, contact the State Bar of Wisconsin Lawyer Referral and Information Service



Right To Be Represented

Union representatives and any non-lawyer advocate may assist

- Must complete a *Limited Power-of-Attorney for Appeal* form (ET-4944)
- This form authorizes a representative to act in matters relating to the appeal

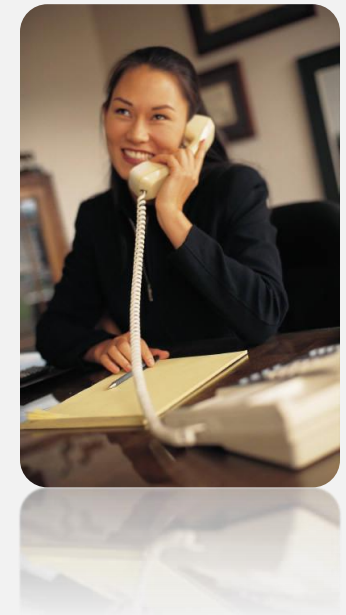
In order for anyone to receive documents regarding a case:

- Must complete an *Authorization to Disclose Non-Medical Individual Personal Information* form (ET-7406) or *Authorization to Disclose Medical Information* form (ET-7414)
- Available on ETF's website or contact the ETF appeals coordinator

Upon Receipt of Your Appeal

Someone from ETF will contact you to determine ...

- If a resolution is possible before the appeal proceeds
- If a resolution is not possible, the appeal will be referred to the Division of Hearings and Appeals for assignment to a hearing examiner



The Hearing Examiner

A hearing examiner presides over the appeal process

- The hearing examiner is an independent, impartial person employed by the Division of Hearings and Appeals at the Department of Administration
- The hearing examiner conducts hearings on administrative appeals

The hearing examiner receives facts and arguments **only** when all parties are present

Prehearing Conference

1

The hearing examiner schedules a prehearing conference (informal discussion) between the parties

- No testimony is taken during this prehearing conference

2

The hearing examiner expects parties to be prepared to:

- Determine who the proper parties are
- Identify the specific issues to be resolved and any factual and legal disputes
- Discuss witnesses likely to be called at the hearing
- The hearing examiner will direct the parties to stipulate to facts and exhibits prior to the hearing
- The hearing examiner schedules a date for the hearing

3

Following the prehearing conference, the hearing examiner issues a memorandum that controls the subsequent course of the appeal

The Hearing



The purpose of the hearing is to receive testimony of witnesses and admit other relevant evidence

Expedited Appeal Process

- A party to an appeal may request an expedited appeal process. Such requests must be in writing and filed with the hearing examiner.
- The hearing examiner will schedule a pre-hearing conference to discuss the reasons for the request, any objections and a procedure for expediting the time period for the appeal.
- A request may be granted based on financial hardship or other extraordinary circumstances.

Decisions Without Holding a Hearing

- The parties may agree to have the appeal decided on the basis of legal briefs and without holding an evidentiary hearing.
- The parties must inform the hearing examiner in writing.
- The hearing examiner will issue a proposed decision after all the briefs have been filed

Informal Disposition

The parties can agree in writing to resolve the appeal informally and must inform the hearing examiner.



The hearing examiner will forward the appeal record to ETF.



Then, ETF will issue an order dismissing the appeal.

The Hearing Process



Appearing
at the
hearing



Witnesses
and
subpoenas



How a
hearing is
conducted



Evidence



Transcript



Appearing at the Hearing

- All parties must appear on the date specified in the Notice of Hearing
- If you do not appear, the hearing examiner may interpret that as a choice to dismiss the appeal or proceed without you



Witnesses and Subpoenas

If you choose to have witnesses testify on your behalf:

- You are responsible for having them appear (voluntarily), **OR**
- You may use a subpoena to order them to appear
 - If no attorney, hearing examiner may sign subpoena for you
 - You must arrange to serve the subpoena on the witness

Must also include payment to the witness (daily fee of \$5) and mileage of 20 cents/mile (see Wis. Stat. § 814.67)

How a Hearing is Conducted

Hearings are conducted similar to a trial, but without a jury

The hearing examiner oversees and rules on procedure, evidence, and objections

1. Each party may present testimony and evidence
2. Each party may call witnesses and ask questions (direct examination)
3. Each party may ask questions of the other's witnesses (cross examination)
4. Each party may ask follow-up questions (redirect and re-cross examination)

Evidence

The appellant (person filing the appeal) carries the “burden of proof”

Must produce witnesses, documentation, etc., to convince the hearing examiner to rule in his/her favor, then...

- ...Other parties may present evidence and witnesses in support of their side of the appeal
- Evidence may be documents or oral testimony

Be prepared to present only evidence that supports the facts

Evidence

Witnesses can testify only about matters of which they have personal knowledge (no “hearsay”)



Uncorroborated “hearsay” does not constitute substantial evidence upon which an administrative decision can be based

- Expert witnesses may be required to testify and express their opinions to verify uncorroborated “hearsay” evidence
- You will be required to identify in advance any expert witnesses you intend to call at the hearing
- Expert witnesses will be discussed at the prehearing conference

Documents as Evidence

- Bring the original for the hearing examiner and copies for yourself and each party
- The hearing examiner marks the documents you offer as exhibit(s) and keeps as part of the record



Evidence

There is no right to take and preserve evidence prior to the hearing, except as provided in Wis. Admin. Code ETF §11.05

Testimony may be taken and preserved of a witness who is:

- Beyond the reach of a subpoena
- About to go out of state, not intending to return in time for the hearing
- Sick or aged, making it probable the witness is unable to attend the hearing
- A member of the Legislature (if in session), provided the witness waives his/her privilege

Depositions may be taken and used at the hearing for the convenience of a party or witness, but only by advance written agreement among all parties

No party shall have access to individual personal information in ETF records except as authorized under Wis. Stat. §40.07 and the Wis. Admin. Code

The Hearing Transcript

A court reporter prepares a written transcript (record) of each hearing

Parties may purchase a copy of the hearing transcript

- Electronic copies are available from the court reporter

Contact the appeals coordinator – fees apply

- Per Wis. Admin. Code ETF § 10.71, for a written transcript, a \$5 flat charge fee applies plus \$1 for each page of the transcript for single copies

The Hearing

Rescheduling and Continuance

- Requests for rescheduling or continuance are accepted only if received within a reasonable amount of time (as established by the hearing examiner) before the date of the hearing
- Requests may be granted as warranted by the circumstances, and upon mutual agreement of all parties
- The hearing examiner will decide whether the hearing should be rescheduled or continued



After the Hearing: Briefs

Parties may file briefs (e.g. letters or other written documents) to further argue a case

Briefs should include:

- Reference to the evidence believed to prove your case
- Reference to the laws believed to apply to your case
- Briefs cannot contain additional evidence or documents not previously admitted into the hearing record
- There are no rules regarding the length or format of a brief

The Proposed Decision

Issued by the Hearing Examiner

Proposed decision includes:

- Findings of all relevant facts
- Application of the law to the facts
- References to the law that governs the case
- A recommendation for deciding the case

- A copy of decision sent to all parties
- Any party may file objections to the proposed decision within 20 days
- After the 20-day deadline, the record of the appeal is delivered to the appropriate board members for consideration

The Final Decision

At the conclusion of a meeting, the board announces the decision and either:

- 1) Accepts the hearing examiner's proposed decision and order
- 2) Accepts the hearing examiner's proposed decision and order with changes
- 3) Adopts a different decision
- 4) Remands the appeal back to the hearing examiner for further action

As permitted under Wisconsin Statute chapter 40, the board confers with its own legal counsel and considers the appeal in a closed session

The Final Decision

Limitations on Board's Power

The governing boards have no equity power except:

The Employee Trust Funds Board, as provided under Wis. Stat. §40.03(1)(a), to correct inequity in the computation of certain benefits resulting from

- A member's combination of full-time and part-time service
- A change in annual earnings period during the high years of earnings
- The previous receipt and termination of an annuity

The Final Decision

1

A copy of the final decision is sent to all parties (with notice of appeal rights)

2

Any party who disagrees with the final decision may appeal to the Dane County Circuit Court for review

3

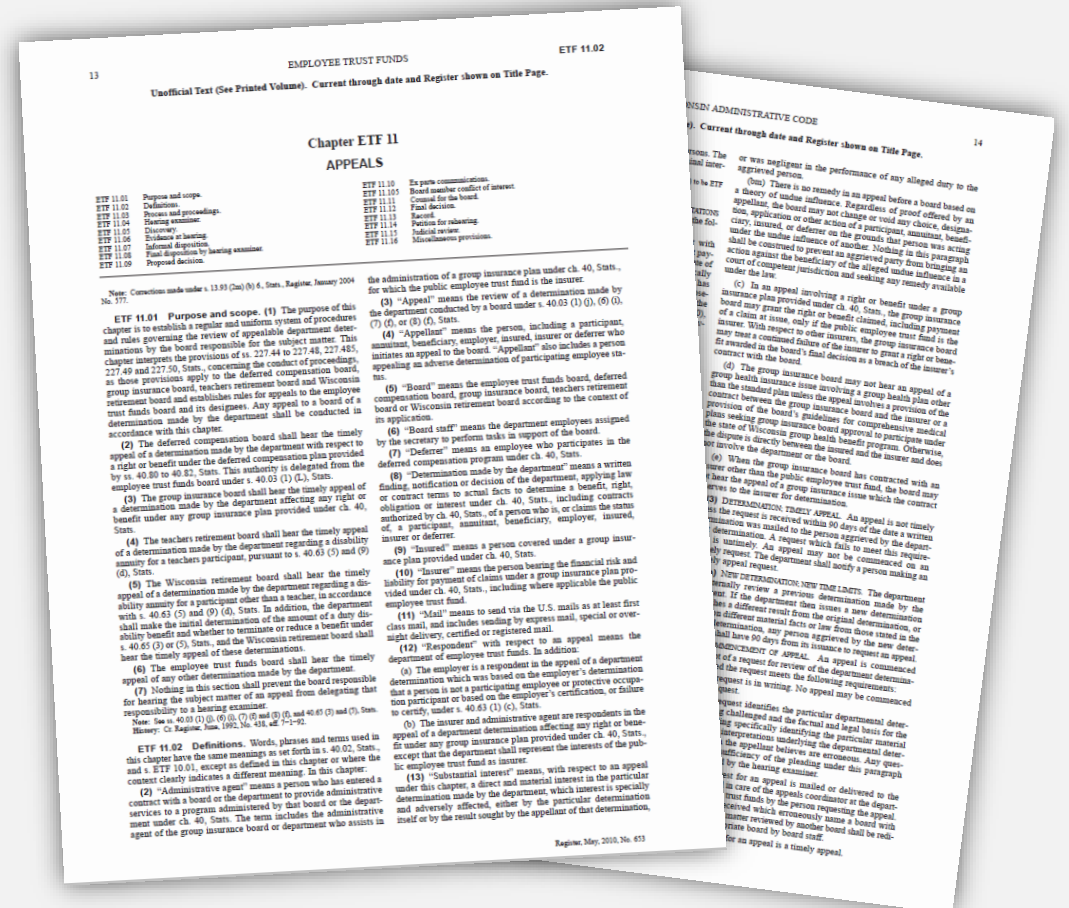
A party may file a petition for rehearing* with the Board within 20 days after notice of the final decision.

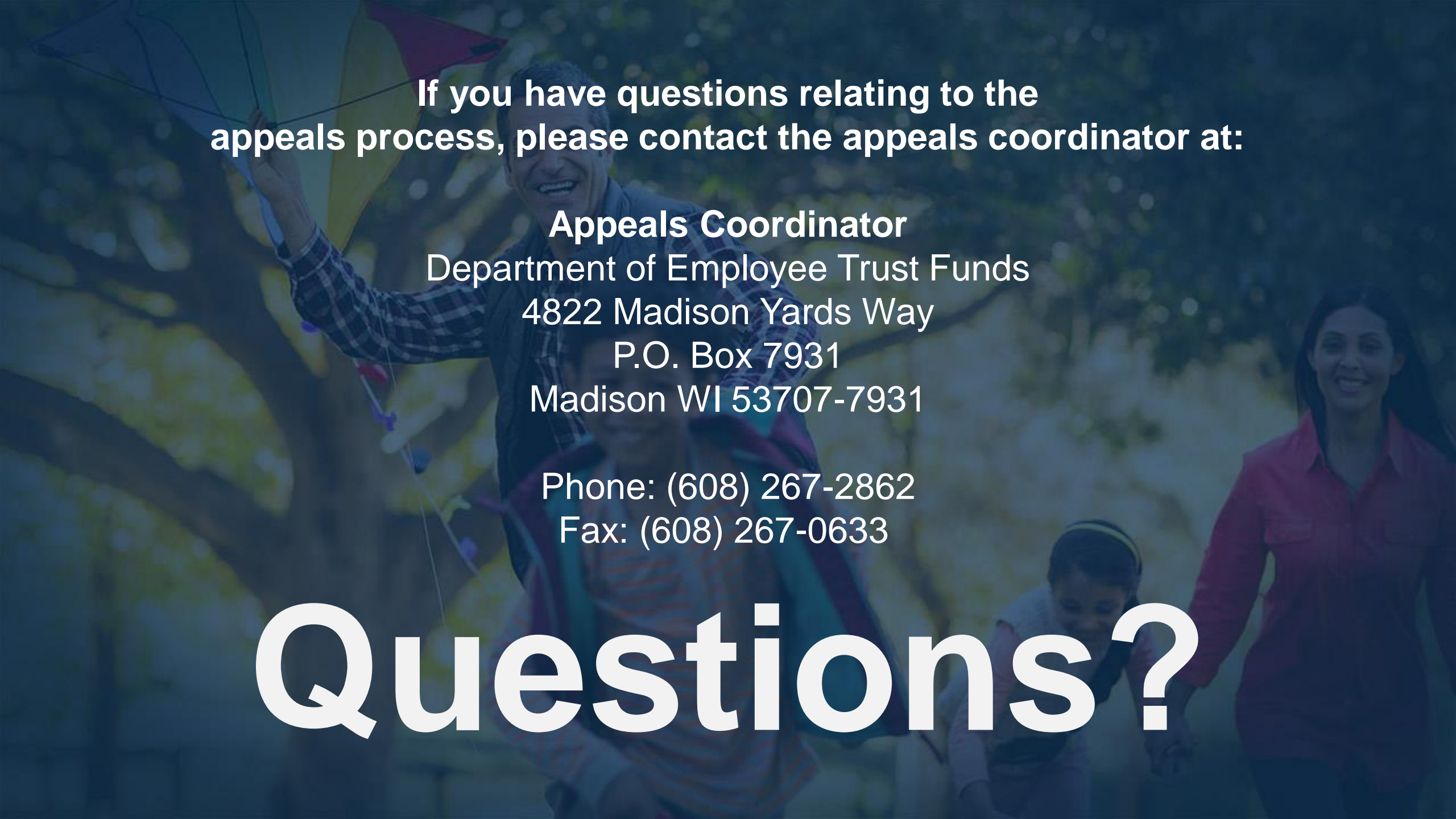
* A rehearing may be granted on the basis of a material error, law or fact, or the discovery of new evidence

Wisconsin Administrative Code

The Wisconsin Administrative Code
(Chapter ETF 11) governs appeals
to the WRS governing boards

Available online at: <http://etf.wi.gov>
Under "related links"





**If you have questions relating to the
appeals process, please contact the appeals coordinator at:**

Appeals Coordinator
Department of Employee Trust Funds
4822 Madison Yards Way
P.O. Box 7931
Madison WI 53707-7931

Phone: (608) 267-2862
Fax: (608) 267-0633

Questions?

Thank you



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ETF E-mail Updates



608-266-3285
1-877-533-5020