

SAN DIEGO COUNTY EMPLOYEES RETIREMENT ASSOCIATION
POLICY FOR DISABILITY RETIREMENT RE-EXAMINATION

I. BACKGROUND AND PURPOSE

- A. The County Employees Retirement Law (“CERL”) contains provisions that allow the Board of Retirement (Board) to require any member who has been granted a disability retirement and is not yet age 55 to undergo medical re-examination. The purpose of this policy is to establish guidelines for re-examination of members who have been granted disability retirements.

The relevant sections of the law are:

1. Government Code § 31729. The board may require any disability beneficiary under age 55 to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the board at the place of residence of the beneficiary or other place mutually agreed upon. Upon the basis of the examination the board shall determine whether the disability beneficiary is still physically or mentally incapacitated for service in the office or department of the county or district where he was employed and in the position held by him when retired for disability.
2. Government Code § 31730. If the board determines that the beneficiary is not incapacitated, and his or her employer offers to reinstate that beneficiary, his or her retirement allowance shall be canceled forthwith, and he or she shall be reinstated in the county service pursuant to the regulations of the county or district for reemployment of personnel.
3. Government Code § 31731. If any disability beneficiary under age 55 refuses to submit to medical examination, his pension shall be discontinued until his withdrawal of such refusal, and if his refusal continues for one year, his retirement allowance shall be canceled.

II. ASSESSMENT FOR RE-EXAMINATION

- A. With respect to members under age 55 who have been granted or administratively recommended a grant of disability retirement, the Board directs staff to assess whether that member should be referred to a medical re-examination by a physician for the Board.
- B. In making such assessment, staff shall consider, among other things:
1. Whether medical evidence to support permanent incapacity was based on subjective complaints of the member;
 2. Whether any physician who has evaluated the member has made a recommendation for re-examination;
 3. Whether the member has the factors of youth and time for improvement in the physical or mental capacity;
 4. Whether the member has undergone surgery/additional treatment designed to improve the physical or mental incapacity since being granted disability retirement;

5. Whether medical treatment designed to improve the member's physical or mental incapacity is or has become available to the member since being granted disability retirement;
 6. Whether there is information the member may be performing activities which appear to be outside of the permanent work restrictions/limitations presented when the Board made its initial findings of disability;
 7. Whether re-examination was directed by the Board at any time;
 8. Whether the member's work restrictions or the employer's ability to accommodate such restrictions have been substantially modified since the granting of the disability retirement.
- C. Staff will obtain any additional information needed, including without limitation, medical or employment records, witness interviews, and sub rosa video as part of the assessment and re-examination process.
- D. After consideration of the available evidence, staff will:
1. Refer the member to medical re-examination;
 2. Determine the member is not a candidate for re-examination; or
 3. Re-assess the member for re-examination at a later date.
- E. Unless staff has determined the member is not a candidate for re-examination under Section II.D, for all members under the age of 55 who meet one or more of the criteria set forth in Section II.B. above, staff shall perform periodic assessments for re-examination at least once every three (3) years.
- F. Staff will maintain data on all disability retirees under the age of 55, which will be continuously monitored, evaluated and updated.
- G. Staff shall report to the Board on an annual basis the members who underwent re-examination during the calendar year and the outcome of such re-examination including whether the member was found to be incapacitated, whether the member was offered reinstatement, any changes to tax or benefit amounts, and any other information as requested by the Board.

III. RE-EXAMINATION OF MEMBER

- A. Staff shall conduct the process of re-examination as follows:
1. Interview member to obtain current statement of incapacity;
 2. Obtain additional evidence, including records, witness statements and sub rosa video as set forth in Section II.C. above;
 3. Schedule medical examination with SDCERA panel physician at a location within a reasonable distance from the member's residence or other place mutually agreed upon;
 4. Review panel physician's report;

5. If the physician opines that the member is no longer incapacitated for service in the position held by the member when retired for disability, make written recommendation to the Board as to the member's incapacity; and
6. Notice and schedule hearing before Board as to staff's recommendation on the member's incapacity.

IV. BOARD ACTION

- A. At the noticed Board meeting, the Board may take action on staff's recommendation on the member's re-incapacity.
 1. SDCERA will serve the member, by mail, a Notice of Board Decision within 5 days of the date the Board acts on staff's recommendation.
- B. In the event the Board finds that the member is no longer incapacitated, the member may request a hearing de novo. The request for hearing de novo, the hearing de novo, and the request for attorney's fees and costs (if the hearing officer recommends that the member is still incapacitated) shall be governed by the Procedures and Regulations for Disability Retirement Matters (the "Procedures and Regulations"), as applicable.
- C. Following a hearing de novo, the Board will take action on the hearing officer's recommended decision. The hearing before the Board shall be governed by the Procedures and Regulations, as applicable.
 1. SDCERA will serve the member, by mail, a Notice of Decision within 5 days of the date the Board acts on the hearing officer's recommended decision.
 2. Board decisions become effective upon service of the Notice of Decision. The time for filing a writ review request shall run from the date of service of the Notice of Decision.

V. EFFECT OF BOARD ACTION

- A. Continuance/Cancellation of Disability Retirement Benefit. If a member is found to be no longer incapacitated, it is understood the disability retirement payments must continue until the employer has offered to reinstate the member. (Government Code §31730). However, if the Board finds that the member is no longer incapacitated and the employer has offered to reinstate the member, the member's disability retirement benefit shall be canceled forthwith. (Government Code §31730)
- B. Tax Excludability. A portion of disability retirement benefits may be considered excludable from gross income under certain circumstances. If, after re-examination, a member is found to be no longer incapacitated and the employer does not offer to reinstate the member, the disability retirement benefit ceases to be a benefit received in the nature of a worker's compensation statute and is thus no longer excludable from gross income under the Internal Revenue Code. See Treas. Reg. § 1.104-1(b). Accordingly, SDCERA shall report such benefits received by the member as taxable income and shall withhold tax accordingly.

VI. MEMBER'S REFUSAL TO SUBMIT TO RE-EXAMINATION

- A. In accordance with section 31731, any member refusing to submit to re-examination for a period of one year will have his/her disability retirement payments cancelled.
1. Members and/or their respective counsel will be notified by written communication of the date and time the Board will meet to decide whether disability retirement payments may be canceled under § 31731. The communication will be mailed by first class mail no later than seven (7) days before the scheduled meeting.
 2. The communication will include the following:
 - a) Notice that the Board's deliberation and actions will be conducted in open public session
 - b) Members and/or their respective counsel may request that the matter be held in closed session
 - c) Request for closed session must be in writing and state a reason for the request
 - d) Requests must be received by 5:00 p.m. three (3) business days before the scheduled Board meeting
 - e) The Board will review requests for closed session during the open meeting and take a vote as to whether to grant the member's request
 3. The agenda for the Board meeting will include an item to consider and vote on the request for closed session and will include the following statement:

Note: The Board will consider and vote on retirement benefit modifications/cancellations in open session with the following exception: the Board will consider and vote in closed session pursuant to Government Code Section 54957 when the member has requested a closed session and the Board votes to grant the member's request.
 4. Upon conclusion of the Board's vote on the closed session request the Board will immediately adjourn to closed session to hear matters approved for closed session.

REVIEW

This policy shall be reviewed by the Board at least every three (3) years and may be amended at any time.

HISTORY

June 17, 2004	Adopted, effective July 1, 2004
February 5, 2015	Revised, effective immediately