

Title 27: Personnel

Part 210: PERS, Regulations for Retirement Plans Administered by the Board of Trustees

Chapter 42: Rules of Hearing Practice and Procedure before the Board of Trustees of the Public Employees' Retirement System of Mississippi

100 Purpose

This regulation governs all practice and procedure before the Board of Trustees of the Public Employees' Retirement System of Mississippi in all matters arising under all retirement plans or programs administered by the Board, except where specifically otherwise provided by the statutes of such programs or retirement plans, for which a hearing is requested in any contested case.

101 Construction of regulation

Where good cause appears, not contrary to statute, the Board may permit deviation from these rules insofar as it may find compliance therewith to be impracticable or unnecessary.

102 Definitions

The following words and phrases as used in this Regulation, unless a different meaning is plainly required by the context, have the following meanings:

1. "Board" means the Board of Trustees of the Public Employees' Retirement System of Mississippi.
2. "Executive Director" means the executive director of the Public Employees' Retirement System of Mississippi.
3. "Hearing Officer" or "Committee" means the Disability Appeals Committee or the Claims Committee of the Board of Trustees of the Public Employees' Retirement System of Mississippi, as applicable.
4. "PERS" means the Public Employees' Retirement System of Mississippi.
5. "Presiding Officer" means the person who presides over the appeals hearing.
 - a. The Presiding Officer for the Disability Appeals Committee will be a voting member of the Committee.
 - b. The Presiding Officer for the Claims Committee may be a representative from the Office of the Attorney General, other than the PERS Attorney General Representative, who may also act as a non-voting legal advisor to the Committee during deliberations on the outcome of the hearing.

103 Perfection of appeal to the Board by timely filing

1. All appeals to the Board shall be initiated by filing a written Notice of Appeal on a form prescribed by the Board.
2. A Notice of Appeal to the Board must be filed within 60 days after the date a person receives written notice of the administrative decision of the Executive Director or decision of the Medical Board, as applicable. Such notice may be filed by mail or in

person. Failure to file a completed Notice of Appeal within the time specified shall be a bar to the filing of such appeal.

3. Once an appeal is timely filed, it shall be assigned a docket number.

104 Filing of pleadings and other documents

1. All documents relating to any proceeding pending or to be instituted before the Board shall be filed with the Executive Director, or his or her designee, at 429 Mississippi Street, Jackson, Mississippi 39201-1005.
2. All documentation filed by any party to an appeal must specify the assigned docket number and should be directed to the Executive Director, or his or her designee.

105 Exhaustion of remedies

No person may file an appeal with the Board until there has been an administrative decision by the Executive Director or, in the case of disability appeals, a decision by the Medical Board. Failure to exhaust administrative remedies, as herein provided, shall constitute a bar to any action in the courts, to the extent consistent with the laws of this state.

106 Judicial review

After an Order has been issued by the Board, an aggrieved party may file an appeal with the Circuit Court of the First Judicial District of Hinds County, Mississippi. Any such Notice of Appeal must be filed with the Hinds County Circuit Clerk within 30 days of the entry of the Order of the Board being appealed. Failure to file a Notice of Appeal within the time frame specified will act as a procedural bar and will leave the courts without jurisdiction to hear the appeal.

107 Assignment of Hearing Officer, setting of hearing and appearance

1. The Board may, by Order entered in its minutes, appoint a committee of the Board or such other qualified personnel as Hearing Officer.
2. The Executive Director shall set a date and time for the hearing. Unless otherwise ordered, hearings shall be held in the Hearing Room of the PERS Building located at 429 Mississippi Street, Jackson, Mississippi.
3. A Notice of Hearing shall be sent via United States mail to the appealing party and legal representative, if applicable.
4. If an appealing party fails to appear at the hearing, the Presiding Officer may proceed with the hearing and prepare a proposed statement of facts and recommendation to the Board based on the evidence presented at such hearing.

108 Continuances and rescheduling of hearings

1. Any request for a change or delay of a scheduled hearing must be made to the Executive Director in writing.
2. Continuances requested by any party shall be granted within the discretion of the Presiding Officer or Executive Director only for good cause shown.
3. If a continuance is granted upon a request made less than 14 days prior to a scheduled hearing, the requesting party will be responsible for paying any costs of rescheduling. Payment must be received before a new hearing date will be scheduled.

4. When a continuance is granted or a hearing is rescheduled or relocated for any reason, each party shall be responsible for notifying their witnesses of the date, time and location of the hearing.

109 Witnesses for non-disability-related appeals

In an appeal, other than one from a decision of the Medical Board, each party shall file a list of witnesses who will testify at the hearing, as well as a brief summary of testimony to be given. Each party must file a witness list in compliance with this regulation no later than 10 days prior to the date of the hearing.

1. The list shall contain for each witness proposed to be called by the appealing party:
 - a. Name;
 - b. Relationship to the appealing party (e.g., co-worker, supervisor, spouse, etc.); and
 - c. Brief summary of testimony to be given.
2. The list shall contain for each witness proposed to be called by PERS:
 - a. Name;
 - b. Employer;
 - c. Title or position; and
 - d. Brief summary of testimony to be given.

110 Conduct of hearing

1. Each party may be represented by an attorney.
2. At any hearing, the parties shall be entitled to enter an appearance (in person or by an attorney), present evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.
3. The Presiding Officer shall have the authority to administer oaths and affirmations.
4. The appealing party may request that attendance at such hearing be limited to individuals essential to the efficient conduct of the hearing, including but not limited to the claimant, attorneys, witnesses, employer representatives, Presiding Officer, Committee members, court reporter, and PERS administrative and support staff as are necessary. The filing of an appeal shall constitute a waiver of confidentiality only to the extent necessary to process and review the claim.
5. The Presiding Officer may clear the hearing room of witnesses not under examination. PERS may have a representative (in addition to its attorney) remain in the hearing room during the entire course of the hearing, even though the representative may testify. The appealing party may remain in the hearing room throughout the hearing.
6. The matter should be heard as directed by and by sole discretion of the Presiding Officer.
7. The Presiding Officer or any Committee member may question a witness during any part of the direct or cross-examination of such witness.
8. The Presiding Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.
9. The Committee may also call upon any party or staff of PERS for further material or relevant evidence upon any issue. However, all parties at interest shall be given a reasonable opportunity to inspect such documents made a part of the record. Further,

- in the case of disability appeals, the Committee shall have the authority to defer a decision to request a medical evaluation or test or additional existing medical records not previously furnished by the claimant. Failure to provide the additional existing medical records within 90 days of notification of such request or refusal to submit to a medical evaluation or test will result in a recommendation being made by the Committee based on the available information. If, prior to the expiration of the 90-day period, an extension of time is requested in writing, the Executive Director may extend the 90-day period provided the applicant can demonstrate that failure to submit to the medical evaluation or test or to provide the additional information was due to circumstances beyond his or her control.
10. At the conclusion of all testimony, the Committee will adjourn and conclude the hearing. Thereafter, the Committee will retire to deliberate, after which the Committee will submit its proposed statement of facts, conclusions of law and recommendation, where applicable, solely for consideration by the Board. The Board has the sole authority to issue a decision relative to all claims on appeal by rendering its Order.

111 Evidence

1. The hearing shall be informal and formal rules of evidence shall not apply. In conducting a hearing, the Committee shall not be bound by the formal rules of evidence and no informality in any proceedings or in the manner of taking of testimony shall invalidate any order or decision of the Board.
2. All testimony to be considered by the Committee, except matters noticed officially or entered by stipulation shall be sworn testimony. Before giving testimony, each person shall swear or affirm that the testimony about to be given before the Committee shall be the truth, the whole truth and nothing but the truth.
3. The Presiding Officer will accept evidence and rule as to the admissibility of evidence that has not been submitted prior to the decision which is the subject of the appeal. All relevant evidence is admissible, but the Presiding Officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations or undue delay, or needless presentation of cumulative evidence. The Presiding officer shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence.
4. Documents received into evidence by the Presiding Officer shall be marked and filed as a part of the record.
5. A copy of the composite exhibit to be introduced on behalf of PERS will be made available to the appealing party prior to the hearing. PERS may charge a fee for providing such copy in accordance with any applicable fee schedule adopted by the Board.
6. Summations of the evidence and the law may be heard in the discretion of the Presiding Officer.

112 Record of hearing

PERS will ensure that all hearings are recorded by electronic or stenographic means. The method used to record each hearing shall be determined by PERS.

In response to a written request for a transcript of proceedings recorded by electronic means, PERS will provide an audio recording of the hearing. The requesting party must contact a certified court reporter to transcribe and certify, under penalty of perjury, on the transcript that he or she heard the witness sworn on the recording and that the transcript is a correct writing of the recording. It is the responsibility of the party requesting the transcript to pay any costs associated with preparation of the requested transcript.

Any party desiring a transcript of a hearing recorded by stenographic means shall make request of the court reporter in attendance and shall be responsible for the payment of the cost of preparation of the transcript.

In the event the claimant appeals the decision of the Board to the Circuit Court of Hinds County, a certified copy of the transcript must be provided to the Executive Director with cost to be borne by the appealing party.

113 Order to be filed upon completion of hearing

After all evidence is heard or received and the hearing is completed and the Committee's deliberation is concluded, the Committee shall certify the record described in Miss. Code Ann. § 25-11-120 (1972, as amended) to the Board. The record shall include the Committee's proposed statement of fact and recommendation. In no case – other than those specifically left open for additional documentation requested by the Committee – shall evidence received after the hearing be included as part of the record for review by the Board. The Board shall receive the record and make its determination based solely on matters contained therein. Such determination shall be final. A copy of the Order shall be sent by the Executive Director to each party or his or her attorney.

114 Service of notices and Orders by the Board

All notices and orders required to be served by the Board, the Hearing Officer or the Executive Director may be served by mail and service thereof shall be complete when a true copy of such document, properly addressed and stamped, is deposited in the United States mail.

115 Amendment, validity, and enforcement of rules

1. The Board may, from time to time, amend these rules or promulgate new rules.
2. If any one or more of these rules is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.
3. The Board shall have the authority, duty and responsibility to abide by and enforce these rules.

116 Fees

The Board may, by order entered in its minutes, assess and collect fees to offset costs related to the conduct of hearings, including, but not limited to, court reporter fees, medical testimony fees, copying costs, etc.

(History of PERS Board Regulation 42: Adopted September 20, 1993; amended December 15, 1997; amended October 1, 1998; amended December 1, 1999; amended July 1, 2002; amended January 19, 2004; amended and reformatted August 1, 2007; amended October 1, 2009; amended effective April 1, 2010; amended effective August 1, 2014; amended effective June 1, 2015; amended effective December 1, 2017)