



Administrative Decision Hearing Process Policy

Policy Statement

The Administrative Decision Hearing Process Policy has been prepared in accordance with Sections 3(2)(d) and 10 of Schedule 5, and Section 10 of Schedule 6 of the *Public Sector Pension Plans Act* (PSPPA). These sections include responsibility of the Board to review administrative decisions made by Alberta Pensions Services Corporation (APS) regarding the Management Employees Pension Plan (MEPP) and the Public Service Management (Closed Membership) Pension Plan (PSM Closed), respectively, pursuant to any delegations made in writing by the Minister.

Policy Requirements

This policy has been developed to provide a fair and impartial process for Plan members of the MEPP and PSM Closed.

The relevant legislation is as follows:

PSPPA, Schedule 5 (MEPP), Sections 3(2) d and 10, and Section 10 of Schedule 6 (PSM Closed)

Section 3(2)(d)

(2) The objects of the Board are:

(d) to review administrative decisions pursuant to any delegation under section

(10) without limiting the Minister's prescribed responsibilities for the administration of the Plan, the Minister may in writing, delegate to the Board the authority to review these administrative decisions of the Minister that are specified in legislation.

The Minister has executed a delegation (Ministerial Authorization) under Section 10, effective April 6, 1994 (**Appendix**). Under this delegation, an administrative decision means a decision with respect to an "individual". Therefore, the Board will review decisions that affect Plan members, or those directly entitled to a benefit from the Plan, for example, beneficiary or Spouse. Hypothetical situations or general questions of pension policy are not handled pursuant to this procedure.

As established in Ministerial Authorization, April 6, 1994, the Board:

- 2) is authorized to review on the Minister's behalf, any administrative decision and make a final decision upon receiving, in writing from an individual directly affected by an administrative decision, a request to review that administrative decision received by the Board within 60 days after that Decision was made.
- 3) may extend the time limit in Section 2.
- 4) may establish such procedures as it sees fit for reviewing administrative decisions.
- 5) may make any decision that could have been made by the Minister as administrator of the Plan, and any decision made by the Board shall become the final decision of the Minister as administrator of the Plan.
- 6) has the power hereby delegated to the Board to make final decisions is subject to the restrictions set out in section 15(1) of the PSPPA (Legislative Provisions) Regulation: no decision shall award or provide or entitle any person to any benefits or any other remedy relating to a benefit unless that benefit or remedy is expressly provided for in and permitted by the Plan or the Regulations.

Therefore, the Board's decision is final, subject to any restrictions set out in the applicable legislation and the Ministerial Delegation. An individual affected by a decision may apply to the Court of Queen's Bench for judicial review under the Alberta Rules of Court.

Process

1. Confidentiality of Materials

All documentation relating to a Board's review of an administrative decision will be treated as confidential.

2. Initiation of Review

A member may request a review of any administrative decision affecting that member. A request for a review must be submitted to the Board, in writing, and received by the Board within 60 days (calendar days is applicable throughout) of receiving their administrative decision from APS.

The time limit for filing a request for review of an administrative decision may be extended by the Board, in circumstances considered appropriate by the ¹Board.

3. Appointment of Board Review Coordinator

The Board shall appoint a Review Coordinator (RC) to coordinate the review on behalf of the Board. The RC may be the Plan Board Director or a person other than APS. The RC shall perform functions relating to the review as required by the Board, such as receiving written submissions, requesting APS prepare and submit materials for the Board's review, taking notes at the hearing and drafting any written materials for consideration by the Board.

4. Reports by APS

When a request from an individual to hear an administrative decision is received, it shall be referred to the RC and to APS. APS shall prepare a submission to the Board which shall include the following:

- a) a case summary outlining the facts and the position of the member;
- b) copies of all policies and legislative provisions relevant to the issues raised by the member;
- c) copies of all correspondence and documentation within APS's possession or control, relevant to the review of the administrative decision;
- d) the position of APS on the issues raised by the member, including, APS's reasons for any conclusion it reaches;
- e) any matters the Board has requested APS address; and,
- f) any other matters APS considers appropriate and relevant.

¹ A review may also be sought by another individual directly affected by an administrative decision. Where that occurs, the provisions in this policy applicable to a "member" will apply, with all the necessary modifications to that member.

APS shall, within 30 days of the members request for a review being requested to APS, forward its submission to the RC, who will forward the information to the member. The member may, within 30 days of APS's submission, file with the RC, further written representation in response to APS's submission.

The referral to the Board shall be made 30 days following receipt of the members' response to APS's submission, or if no response is received, 30 days following the receipt of APS's submission.

5. Written Record

When an administrative decision is referred to the Board, the RC shall within 15 days compile the Written Record. The Written Record shall include a copy of:

- a) the member's request for review;
- b) APS's submission;
- c) all further correspondence, documents and submissions made by the member or APS, after the preparation of their initial submissions; and,
- d) this Procedure and attached Ministerial Authorization (04/1994 and 01/1995).

6. Scheduling a Hearing

Following compilation of the Written Record, a hearing date shall be scheduled. The hearing may be part of a regular Board meeting or may be held separately. In accordance with the *PSPPA Legislative Provisions Regulation*, Schedule 2, Section 3.05, the quorum for appeal hearings is three (3) Board members and a decision requires the support of the majority of Board members present.

The RC will send a notice of the hearing to the member and APS, within 30 days of the hearing, and the Written Record within two weeks of the hearing.

The notice to the member shall include:

- a) notice that the member and/or the member's representative may appear at the Board hearing;
- b) notice that the hearing will be held in English (and that an interpreter will be provided if required, upon request);
- c) notice that the Board retains the right to record the hearing; and
- d) a list of and background information of the Board members who are to attend the

hearing. A minimum of two weeks prior to the hearing, the RC will provide the Written Record to all Board members who are attending the hearing.

7. Chair and Acting Chair

The Board Chair may preside over the hearing and, in the absence of the Board Chair, the Vice Chair may preside. If neither can preside, the Board Chair or Vice Chair shall appoint a Hearing Chair.

The Hearing Chair shall have all of the powers and duties of the Board Chair under these Procedures.

8. Consideration of a Matter Without Oral Consent

With the consent of the parties, the Board may consider a matter without holding an oral hearing. In that case, the Board will decide the matter, based solely on the Written Record.

9. Appearance at the Hearing

Hearings are closed and not open to the public. The member and APS may appear at the hearing. The member or APS may have legal counsel present.

APS should identify if they intend on having its legal counsel attend the hearing no later than the time of their initial submission of information; and the appellant should identify whether he/she intend to bring a legal counsel at the initial appeal request and confirm in advance of the hearing. If APS confirms to bring a legal counsel at the time of submission, the RC will inform the appellant at her earliest convenience to provide sufficient time for the appellant to obtain a legal counsel if he/she chooses.

If a person who has requested attendance at the hearing, is provided with notice of the scheduled time and has not arrived at the scheduled time, the Board may adjourn the hearing or proceed in their absence.

10. Presentation at the Hearing

At the hearing, the member and APS may present oral or written evidence and argument. Evidence presented to the Board is subject to cross-examination by the party adverse in interest. The Board may ask a witness or either party questions.

The rules of evidence which apply to judicial hearings do not apply to hearings before the Board.

Unless the Chair directs otherwise, the presentation of evidence and arguments will occur in the following order:

- a) Evidence of the member;
- b) Evidence of APS;
- c) Rebuttal evidence, if any;
- d) Argument of the member;
- e) Argument of APS; and,
- f) Rebuttal argument, if any.

11. Objections and Adjournment

Before commencing the hearing, the Chair will ask if either party objects to the involvement of any Board member due to an apprehension of Bias. If there is an objection, the Board shall recess the hearing and decide whether or not the Board member should continue to attend and participate in the hearing.

The Board may adjourn a hearing if requested to do so by a party or on its own initiative and with any conditions that the Board considers appropriate.

12. Legal Advice Provided to the Board

The Board may obtain legal advice from a lawyer who is independent of the parties to the review. The advice that the Board obtains is privileged. If the advice provided to the Board raises a point of law that has not been raised by the parties and that may, in the opinion of the Board, materially affect the outcome for the hearing, the Board will disclose the advice, or the substance of the advice, to the parties and invite the parties to make submissions in relation to the point of law raised by the independent lawyer.

13. Board Deliberations and Decisions

After all evidence and argument have been heard by the Board, the Board shall meet in private to deliberate. During the deliberations:

- a) Neither the member or their representative, nor representatives of APS shall be present;
- b) the RC may be present at the request of the Board, to record the Board's decisions and the reasons for that decision;
- c) no person other than members of the Board shall participate in the discussion on the merits of the review.

The Board is not bound by previous decisions of the Board, but may have regard for them. The Board shall at all times, comply with the delegation by the Minister and all relevant legislative provisions.

After the Board has made its decision, the RC shall, within 60 days of the Board's decision, send a copy of the Board's written decision, including the Board's reasons for its decision, to the member and to APS.

Upon conclusion of the review, the RC shall provide all materials pertaining to the review to the Plan Board Director or Board staff for Board records.

14. Adjusting Timelines

The Chair may shorten or extend the timelines for taking steps set out in these Procedures, by submitting written direction to all parties.

15. Review

This policy will be reviewed at least once every three years.

Effective: May 27, 1994 (M94:05:03)

Revised: November 24, 1994 (M94:11:03)
May 26, 1995 (M95:05:03)
June 3, 2005 (M05:06:11)
September 6, 2007 (M07:09:08)
June 27, 2014 (M14:06:27.1)
September 5, 2014 (M14:09:05)
June 24, 2016 (M 16:06:01)

PUBLIC SECTOR PENSION PLANS ACT

MINISTERIAL AUTHORIZATION 05/94

I, Jim Dinning, Provincial Treasurer, being the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of Schedule 5 to the Public Sector Pension Plans Act, pursuant to Section 10 of that Schedule 5 make the following delegation:

1. In this authorization
 - (a) "Act" means the Public Sector Pension Plans Act,
 - (b) "Board" means the Board as defined in the Schedule,
 - (c) "Administrative Decision" means any decision made with respect to an individual in regard to an individual in regard to the Plan, made on behalf of the Minister as administrator of the Plan,
 - (d) "Plan" means the Plan as defined in the Schedule,
 - (e) "Regulations" means regulations enacted under section 12 of the Schedule,
 - (f) "Schedule" means Schedule 5 to the Act.
2. The Board is authorized to review on the Minister's behalf any administrative decision and make a final decision upon receiving, in writing from an individual directly affected by an administrative decision, a request to review that administrative decision received by the Board within 60 days after that Decision was made.
3. The Board may extend the time limit in section 2.
4. The Board may establish such procedures as it sees fit for reviewing administrative decisions.
5. The Board may make any decision that could have been made by the Minister as administrator of the Plan; and any decision made by the Board shall become the final decision of the Minister as administrator of the Plan.
6. The power hereby delegated to the Board to make final decisions is subject to the restrictions set out in section 15(1) of the Public Sector Pension Plans (Legislative Provisions) Regulation: no decision shall award or provide or entitle any person to any benefits or any other remedy relating to a benefit unless that benefit or remedy is expressly provided for in and permitted by the Plan or the Regulations.

DATED at Edmonton, Alberta, this 6 day of April 1994

[Original signed]
PROVINCIAL TREASURER

PUBLIC SECTOR PENSION PLANS ACT

MINISTERIAL AUTHORIZATION 01/95

I, Jim Dinning, Provincial Treasurer, being the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of Schedule 6 to the Public Sector Pension Plans Act, pursuant to Section 10 of that Schedule 6 make the following delegation:

1. In this authorization
 - (a) "Act" means the Public Sector Pension Plans Act,
 - (b) "Board" means the Board as defined in the Schedule,
 - (c) "Administrative Decision" means any decision made with respect to an individual in regard to an individual in regard to the Plan, made on behalf of the Minister as administrator of the Plan,
 - (d) "Plan" means the Plan as defined in the Schedule,
 - (e) "Regulations" means regulations enacted under section 12 of the Schedule,
 - (f) "Schedule" means Schedule 6 to the Act.
2. The Board is authorized to review on the Minister's behalf any administrative decision and make a final decision upon receiving, in writing from an individual directly affected by an administrative decision, a request to review that administrative decision received by the Board within 60 days after that Decision was made.
3. The Board may extend the time limit in section 2.
4. The Board may establish such procedures as it sees fit for reviewing administrative decisions.
5. The Board may make any decision that could have been made by the Minister as administrator of the Plan; and any decision made by the Board shall become the final decision of the Minister as administrator of the Plan.
6. The power hereby delegated to the Board to make final decisions is subject to the restrictions set out in section 15(1) of the Public Sector Pension Plans (Legislative Provisions) Regulation: no decision shall award or provide or entitle any person to any benefits or any other remedy relating to a benefit unless that benefit or remedy is expressly provided for in and permitted by the Plan or the Regulations.

DATED at Edmonton, Alberta, this 27th day of October, 1995.

[Original signed]
PROVINCIAL TREASURER