

BENEFITS COMMITTEE

AGENDA

Board of Fire and Police Pension Commissioners

George Aliano, Chair
Pedram Salimpour, Vice Chair
Carl Cade
Sam Diannitto

December 18, 2014
8:30 a.m.

Los Angeles Times Building
202 W. First Street, Suite 500
Los Angeles, CA 90012

Commissioner Diannitto will participate telephonically from
4612 El Reposo Drive, Los Angeles, CA 90065

An opportunity for the public to address the Board or Committee about any item on today's agenda for which there has been no previous opportunity for public comment will be provided before or during consideration of the item. Members of the public who wish to speak on any item on today's agenda are requested to complete a speaker card for each item they wish to address, and present the completed card(s) to the commission executive assistant. Speaker cards are available at the commission executive assistant's desk.

In compliance with Government Code Section 54957.5, non-exempt writings that are distributed to a majority or all of the Board or applicable Committee of the Board in advance of their meetings may be viewed at the office of the Los Angeles Fire and Police Pension System (LAFPP), located at 360 East 2nd Street, 4th Floor, Los Angeles, California 90012, or by clicking on LAFPP's website at www.lafpp.com, or at the scheduled meeting. Non-exempt writings that are distributed to the Board or Committee at a scheduled meeting may be viewed at that meeting. In addition, if you would like a copy of any record related to an item on the agenda, please contact the commission executive assistant, at (213) 978-4555 or by e-mail at barbara.nobregas@lafpp.com.

Sign language interpreters, communication access real-time transcription, assistive listening devices, or other auxiliary aids and/or services may be provided upon request. To ensure availability, you are advised to make your request at least 72 hours prior to the meeting you wish to attend. Due to difficulties in securing sign language interpreters, five or more business days notice is strongly recommended. For additional information, please contact the Department of Fire and Police Pensions, (213) 978-4545 voice or (213) 978-4455 TDD.

1. [CITY MANGEMENT AUDIT RECOMMENDATIONS ASSIGNED TO THE DISABILITY PENSION SECTION AND POSSIBLE COMMITTEE ACTION](#)
2. GENERAL PUBLIC COMMENT ON MATTERS WITHIN THE COMMITTEE'S JURISDICTION

SPECIAL MEETING

AGENDA

Board of Fire and Police Pension Commissioners

December 18, 2014

8:30 a.m.

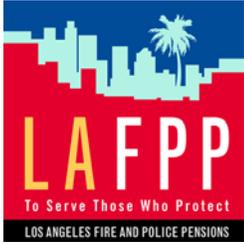
**Los Angeles Times Building
202 W. First Street, Suite 500
Los Angeles, CA 90012**

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- 1. CITY MANGEMENT AUDIT RECOMMENDATIONS ASSIGNED TO THE DISABILITY PENSION SECTION AND POSSIBLE COMMITTEE ACTION**
- 2. GENERAL PUBLIC COMMENT ON MATTERS WITHIN THE COMMITTEE'S JURISDICTION**



DEPARTMENT OF FIRE AND POLICE PENSIONS

360 East Second Street, Suite 400
Los Angeles, CA 90012
(213) 978-4545

REPORT TO THE BENEFITS COMMITTEE

DECEMBER 18, 2014

ITEM: 1

FROM: Raymond P. Ciranna, General Manager

**SUBJECT: CITY MANAGEMENT AUDIT RECOMMENDATIONS ASSIGNED TO THE
DISABILITY PENSION SECTION AND POSSIBLE COMMITTEE ACTION**

RECOMMENDATION

That the Benefits Committee:

1. Review the following analysis and recommendations from the Disability Pension Section; and,
2. Recommend they be communicated to the full Board to be reviewed and approved.

BACKGROUND

On March 12, 2014, the City Controller's Office released the City Management Audit, also referred to as the Hewitt EnnisKnupp (HEK) Management Audit Final Report of the Los Angeles Fire and Police Pension Fund. On October 2, 2014, the Benefits Committee assigned HEK Recommendations 38, 39, and 40 to the Disability Pension Section for further analysis and comment.

Based upon information collected through interviews with staff, review of Board Operating Policies and Procedures, and excerpts from the Disability Pension Section's manual, HEK concluded that LAFPP's disability program is being administered in a manner that is generally consistent with market norms. Given its program volume and maturity, the in-sourced administration model that LAFPP uses is reasonable. Although the average disability application processing time decreased during the five-year scope period, it is considerably longer than the average processing times stated by the peer group systems (i.e., LACERS, Fire & Police Pension Association of Colorado, Ohio Police & Fire Pension Fund, School Employees Retirement System of Ohio, Public Employee Retirement System of Idaho, Orange County Employees Retirement System). Strict adherence to processing times can be difficult to achieve due to the inherent need to rely on external parties for information and scheduling, and the complexity of some cases. The following recommendations may be opportunities to streamline the process and improve timeliness.

DISCUSSION

Staff recommends that the Benefits Committee review staff's analysis and proposed dispositions of Recommendations 38, 39, and 40 as follows:

HEK Recommendation #38

Evaluate the informal practice currently used to schedule Board hearing dates and explore ways to enhance timeliness.

HEK identified that Staff has been informally instructed to schedule no more than two disability pension hearings per Board meeting where the member is not in agreement with Staff's recommendation, which may unintentionally lengthen the process. It was also noted that when issues of high priority on the business agenda arise, disability hearings may be rescheduled to a later date.

To facilitate the Board's involvement, staff prepares information for the Board's use, including a written recommendation regarding all components of the decision (i.e., award or denial, percentage amount, service connectedness, and status of future reviews) pertaining to each case. A tentative Board hearing is scheduled when all pension doctor reports have been received and staff has reviewed them for conformance with the guidelines provided to each doctor with every Administrative File. The Disability Pension Analyst contacts the applicant/attorney to schedule a hearing date 10-12 weeks in advance, so that:

- A job letter and payroll history can be received from the employing department
- Length of service and final average salary can be computed
- A Board report can be written and assembled for review by the Assistant Pension Claims Officer, the Pension Claims Officer, the Assistant General Manager and the General Manager
- A Recommendation Acknowledgement Letter can be sent and received back from the applicant/attorney indicating their agreement/disagreement with Staff's recommendation
- The Board package can be copied and distributed to Commissioners, the City Attorney, the Medical Liaison Officer, and the applicant/attorney at least one week prior to the hearing date

The hearing on an application for disability or survivor benefits before the Board is non-adversarial. Staff obtains evidence for the Board's consideration, but does not act as an opposing party. Alternative (Alt.) 1 and Alt. 2 procedures were enacted to expedite the hearing process. An Alt. 1 hearing is held when the applicant agrees with Staff's recommendation and the Board acts in accord with the recommendation. An Alt. 2 hearing allows the Board to focus on issues where Staff has made a recommendation that the applicant disagrees with. Since Alt. 1 hearings are brief, they may be scheduled at the beginning of the Board meeting so that the applicant/attorney does not have to wait for a lengthy business agenda to conclude. Since Alt. 2 cases can take an hour or more to hear, Staff normally schedules a maximum of two per Board hearing because they are presented after the business agenda and losing a quorum is a concern.

Once the pension doctor reports have been accepted and distributed, Disability Analysts contact the applicant/attorney to select a Board date and inquire whether or not witnesses are expected to testify on behalf of the applicant. Historically, the Board has allowed applicants/attorneys to request a one-time continuance with no reason given since attendance at Alt. 2 hearings is required by the applicant/attorney. If a continuance is requested, Staff works with the applicant/attorney to reschedule the case for the next available Board hearing date. If an additional continuance is

requested, Staff informs the Pension Claims Officer and works with the applicant/attorney to proceed accordingly.

Staff's Recommendation: Disability Analysts continue to follow current scheduling procedures and request that the Board consider scheduling Alt. 1 hearings at the beginning of the Board meeting as a standard practice, subject to the discretion of the Board President and the General Manager.

HEK Recommendation #39

Shift some of the burden of information submission to the member as part of the disability application process.

Currently, LAFPP Staff handles all responsibilities related to the disability process internally, including case management, member counseling, evidence gathering, determining eligibility, calculating benefits, interpreting physician's reports, and preparing recommendations for the Board. The required interaction with numerous external parties, including the member, the member's attorney/representative, treating and pension physicians, Medical Liaison personnel, Workers' Compensation analysts, the City Attorney's Office, among others, can make timeliness challenging.

When Staff has difficulty acquiring certain medical records/test results for various reasons, they will request assistance from the applicant. Some applicants/attorneys regularly send medical records to Staff for inclusion in the file. It is Staff's responsibility to develop the adjudicative record containing critical and confidential information relied upon by the Board to make an informed decision when acting on applications for disability retirements. When an application is received:

- Staff immediately requests records from the City's Workers' Compensation Administrator, Medical Services Division of the Personnel Department, and records from the Police, Fire, or Harbor Department
- Records are also requested from doctors, hospitals and clinics listed on the application
- Staff reads all the records and assembles the Administrative File, tracking down any records that may be missing
- An appendix is then typed and transmitted to the applicant/attorney to review, and to notify Staff if there is additional documentation missing

Staff conducts a very thorough and 'high touch' process when collecting and organizing records for the members. However, staff has not previously relied solely upon an applicant/attorney for all records since some applicants may not disclose all information, including substance abuse or psychiatric hospitalizations, off-duty accidents/injuries, off-duty employment, complaints/disciplinary actions, lawsuits, settlements, arrest reports, etc. Therefore, Staff feels compelled to continue to request/obtain sensitive records independently of the applicant.

The Board may consider adopting a policy whereby a member's application is not considered complete until they submit all required medical documentation, which may require the applicant to complete an affidavit certifying that they have provided a complete history of their medical condition. HEK noted that LAFPP's tracking time begins immediately upon submission of an application, while other systems may not start tracking the time for processing until they are in receipt of complete application documentation. Other systems also have and enforce strict deadlines within which the member must submit the information, along with the ability to administratively withdraw an application with advanced notice to the member if the documentation is outstanding for more than a

specified period of time. Staff would still have the same concern that an applicant may not disclose all relevant information (e.g., non-work related, disciplinary or legal) and would reserve the right to request additional records when necessary.

Staff's Recommendation: Applicants be required to submit a signed affidavit and have all medical documentation from non-industrial medical providers sent directly from provider(s) to LAFPP, while Staff continues to obtain the Workers' Compensation, Medical Services Division and Fire/Police/Harbor Department records to ensure the completeness of the Administrative File relied upon by the Board to make an informed decision when acting on applications. Staff will continue to reserve the right to request medical information directly from doctors, hospitals, and clinics if they believe any relevant information has not been disclosed or received that would be necessary for Board review.

HEK Recommendation #40

Determine what other common practices, such as delegating specific decision-making authority or retaining a Board medical advisor, could streamline the process, and what changes to governing law, policies or procedures would be necessary to do so.

HEK noted that some systems have implemented a model whereby the staff is not only responsible for processing and determining initial eligibility, but also for performing some of the decision-making functions for which the Board would typically be responsible. Some systems retain physicians as medical advisors to the Board and staff, and delegate certain decision-making authority to a committee or panel made up of staff and system-retained medical advisors, while other systems outsource the administration of disability applications to a third-party administrator.

Currently, it is Staff's responsibility to collect the medical evidence pertaining to injuries/illnesses on all applications for disability retirement, organize, read it and send the applicant to the appropriate physicians (no less than three physicians are required by the City Charter/Administrative Code) for examination. The physicians review the complete Administrative Record, personally examine the applicant and submit a report of their evaluation. Staff reviews the reports for completeness as to diagnosis, causation, restrictions, rehabilitation and treatment. Supplemental reports may be requested if clarification is necessary or if new evidence is discovered. Based on the medical evidence at hand, Staff prepares a report to the Board summarizing the background information, doctors' findings and job availability, and makes a recommendation regarding the issues of disability, service-connection and percentage of disability. The Board is the trier of fact at the disability hearing and Board decisions should be based upon the evidence in the record. This record can be filed in Superior Court in response to applicant appeals of Board decisions.

Public retirement systems that are similarly charged with the administration of disability benefits have several primary models from which to choose. Approximately 10% of responding systems that HEK contacted outsource the administration of disability applications to a third-party administrator; 12% retain physicians as medical advisors and delegate certain decision-making authority to a committee or panel made up of staff and system-retained medical advisors; and 78% of responding systems handle the complete administration of disability applications internally. Disability Staff contacted seven pension plans (i.e., DWP, LACERA, OCERS, PERS, Sacramento County, San Francisco ERS, Colorado Fire & Police) and learned that three utilize a medical advisor (DWP, LACERA, Colorado Fire & Police) while four do not. There are pros and cons for utilizing a medical advisor:

PROS

1. A medical advisor can review pension doctor reports and Staff recommendations to ensure disability determinations are medically accurate.
2. An advisor can be present at Board hearings to clarify/explain medical terminology or testimony.
3. An advisor can serve as a mediator between Staff and the Board if there is a conflict in opinion or interpretation.

CONS

1. Possible conflict of interest since the medical advisor is paid by the Plan.
2. Physicians in one specialty are not qualified to comment on specialties outside of their area of expertise.
3. Department would incur additional operational costs to hire/retain an advisor.
4. Processing time may increase due to additional layer of review.
5. Advisor may become frustrated if there is a continued pattern of the Board overriding his/her recommendations. May result in high turnover of advisors.

The City Charter/Administrative Code states that upon filing a disability pension application, the Board shall hold a hearing with respect to such application. The Board shall hear evidence relating to the member's claimed disability and shall have the power to grant or deny any request for a disability pension. The Board also has the power to consider new evidence pertaining to retired members and to increase or decrease the percentage of disability. Currently, the full Board is involved in the final decision regarding a member's disability application.

The Board has the authority to assign hearing examiners to conduct hearings in claims where testimony or legal issues are lengthy or cumbersome and began using them as early as the 1980s. Under this model, Staff coordinates an agreeable hearing date among the hearing examiner, the City Attorney, the applicant, the applicant's attorney and Medical Liaison, reserves the board room and makes arrangements for a court reporter. The hearing examiner oversees the proceedings which are conducted much the same as a court room proceeding, including testimony from the applicant and witnesses. A decision is not rendered on the hearing date; rather the hearing examiner takes all material under submission and forwards a written report to Staff summarizing the findings 6-8 weeks later. A hearing can last 3-6 hours and can be continued to subsequent days if necessary, which requires Staff to again coordinate the steps described above. The claim is then scheduled for a Board hearing once the hearing examiner's report is received. At the Board hearing, the Board may adopt the hearing examiner's report or reject it and grant a full hearing before the Board. Since this type of hearing can be lengthy, may result in longer processing times, requires the payment of additional hearing examiner and court reporter fees, and the possibility that the Board may reject the hearing examiner's recommendation and rehear the case, this procedure is not currently utilized. The last hearing examiner was used in 2002.

The City Charter/Administrative Code empowers the Board to grant, deny, adjust or terminate disability pensions; therefore, delegating specific decision-making authority to another entity, such as a hearing examiner or an independent medical advisor, is not possible without a voter-approved Charter amendment and approval of an ordinance to amend the Administrative Code (Tier 5 only).

However, utilizing a medical advisor (in-house or contract) may prove helpful and beneficial on a case by case basis, i.e., to assist Staff with selecting physician specialties, clarify or interpret medical terminology, determine predominant cause in claims of unknown etiology, and help formulate recommendations whenever there are conflicting pension doctor findings. Additionally, at the Board's request, their appearance at disability hearings can provide professional knowledge and explain or clarify medical terminology. Historically, the Board has made informed decisions based on pension doctor report findings, Staff recommendations and applicant/witness testimony without the use of a medical advisor.

After surveying the above-identified pension plans, there are various options for the Board to consider, specifically the medical advisor's role in the disability process and the additional operating costs. Based on information collected telephonically from the seven plans, only two utilize a medical advisor on a contract basis (Colorado Fire & Police spends approximately \$42,000 per year on a medical advisor; LACERA spends approximately \$60,000 per year), while DWP retains an in-house full-time physician (salary: approximately \$250,000 per year). Currently, standard rates for a physician can range from approximately \$400-\$700 per hour to review medical records/reports/recommendations and approximately \$3,000-\$5,000 per hour (3 hour minimum), plus travel time to attend hearings. Hourly rates are negotiated with individual doctors and will vary depending on the individual physician and their specialty.

Staff's Recommendation: The Board should continue to follow current hearing procedures and rely upon the evidence in the Administrative File and testimony at hearings to make informed decisions, but consider the above options in the future if the Board wishes to seek changes to governing law, policies, or procedures in order to modify the disability process.

BUDGET

There is no budget impact associated with this report.

This report was prepared by:

Christopher J. Annala, Manager
Disability Pension Section

RPC:JS:CJA:TZ