

EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
STATEWIDE BENEFITS OFFICE
29 Delaware Code, Section 5256 (29 Del.C. §5256)

PROPOSED

PUBLIC NOTICE

Disability Insurance Program Rules and Regulations

Pursuant to the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 29 Del.C. §5256, the State Employee Benefits Committee established by 29 Del.C. §9602 is considering adopting rules and regulations for the general administration of the Disability Insurance Program established pursuant to Title 29, Chapter 52A of the Delaware Code.

Any person who wishes to submit written suggestions, compilations of data, briefs or other written materials concerning the proposed rules and regulations must submit same to Brenda Lakeman, Director, at Statewide Benefits Office, 500 W. Loockerman Street, Suite 320, Dover, DE 19904 or by email at brenda.lakeman@state.de.us or by fax at (302) 739-8339 by January 20, 2012. A public hearing to consider the adoption of the Disability Insurance Program Rules and Regulations will be held during the State Employee Benefits Committee meeting scheduled on January 30, 2012 at 2:00 pm at the Tatnall Building, 150 William Penn Street, Dover, DE 19901.

The action concerning the adoption of the proposed rules and regulations will be based upon the results of the State Employee Benefits Committee staff analysis and consideration of any comments and written materials submitted by any person.

Disability Insurance Program Rules and Regulations

1.0 Purpose

The purpose of the proposed Disability Insurance Program Rules and Regulations is to provide State employees and administrative staff with access to policies currently in force and in practice with respect to the Disability Insurance Program. The proposed Rules and Regulations encompass and combine processes that have been developed since inception of the Disability Insurance Program and over the past five (5) years.

2.0 Definitions

"Base Rate of Compensation" means the employee's usual rate of pay, not including commissions, bonuses, shift differential pay, overtime pay or any other fringe benefit or extra compensation.

"Claimant" means a person enrolled in the DIP who applies for STD and/or LTD benefits and/or an extension of STD and/or LTD benefits or who is receiving or has received STD and/or LTD benefits.

"Committee" means the State Employee Benefits Committee (SEBC)

"Creditable Compensation" as defined in 29 Del.C. §5251(c), shall mean the base rate of compensation that the employee received on the last day of employment before the employee developed a disability.

"Employee" shall mean an eligible "employee" as defined in 29 Del.C. §5501(e), (<http://delcode.delaware.gov/title29/c055/sc01/index.shtml>) who elects to participate in the DIP as specified in 29 Del.C. §5519 (<http://delcode.delaware.gov/title29/c055/sc02/index.shtml>). This shall include any employee who is collecting benefits pursuant to 11 Del.C. §8352(4) (<http://delcode.delaware.gov/title11/c083/sc03/index.shtml>).

"Essential Duty" means a duty that is substantial, not incidental; is fundamental or inherent to the occupation; and cannot be reasonably omitted or changed. To be at work for the number of hours in the employee's regularly scheduled workweek is also an essential duty. Any occupation means an occupation for which the employee is qualified by education, training or experience.

"Medical Care" is received when a physician is consulted or medical advice is given or treatment is recommended, prescribed by, or received from a physician. Treatment includes, but is not limited to, medical examinations, tests, attendance or observations and use of drugs, medicines, medical services or equipment.

"Member" means a person enrolled in or was previously enrolled in the DIP.

"Pre-Disability Base Pay" shall mean the compensation paid to the employee on the last day of employment before the employee developed a disability.

"Pre-Existing Condition" means any accidental bodily injury, sickness, mental illness, pregnancy, or episode of substance abuse or any manifestations, symptoms, findings, or aggravations related to or resulting from such accidental bodily injury, sickness, mental condition, pregnancy or substance abuse for which the employee received medical care during the 3 month period that ends the day before:

- a. The employee's effective date of coverage in DIP; or
- b. The effective date of a change in DIP coverage.

"RTW Coordinator" means the person selected by the Office of Management and Budget to assist individuals enrolled or previously enrolled in the DIP who expect to be out of work due to a disability in their transition back to work. Return To Work assistance may be requested by an employee, previously employed individual and/or by an employing organization. The RTW Coordinator may also consult with the individual's health care provider(s) to acquire and/or clarify a claimant's restrictions and/or limitations if applicable, to facilitate a safe return to the workplace.

3.0 Eligibility and Enrollment Rules

- 3.1 Pursuant to the authority vested in the State Employee Benefits Committee (SEBC) by 29 Del.C. §5210(4), §9602(b) (4) and §5255, the SEBC adopts these eligibility and coverage rules for the State of Delaware's Disability Insurance Program (DIP). In the event of conflict between these rules and the Delaware Code, the Delaware Code takes precedence over these rules. DIP is comprised of a Short Term Disability (STD) program and a Long Term Disability (LTD) program.
- 3.2 An employee must meet one of the following criteria to be eligible for enrollment in the DIP:
 - 3.2.1 Hired on or after January 1, 2006 into a position covered by the Delaware State Employees Pension Plan pursuant to 29 Del.C. Ch. 55.
 - 3.2.2 As of January 1, 2006 had fewer than 5 credited years of service.
 - 3.2.3 As of January 1, 2006 had 5 or more years of credited service and elected enrollment in the DIP.
 - 3.2.4 Pursuant to 29 Del.C. §5251(e), a retired Delaware State Police Trooper employed in a pension covered position in the Delaware State Employees' Pension Plan on or after July 1, 2008.
- 3.3 Eligibility for participation in the DIP shall terminate upon the earliest to occur of:
 - 3.3.1 The date in which the State of Delaware ceases to sponsor this program; or
 - 3.3.2 The date the employee is no longer covered by the Delaware State Employees' Pension Plan pursuant to 29 Del.C. §5519; or
 - 3.3.3 Normal service retirement at age 65; or
 - 3.3.4 The death of the employee.
- 3.4 Dependents are not eligible for enrollment in the DIP.
- 3.5 Coverage is effective the first day the employee is actively at work or the date the employee returns to active employment on a full-time basis if the employee was absent due to a disabling condition. There is no waiting period to be enrolled in the DIP.
- 3.6 In accordance with 29 Del.C. §5252, the State shall pay all premium or subscription charges for the full cost of providing coverage for the DIP.

4.0 Short Term Disability (STD) Elimination Period

- 4.1 Pursuant to 29 Del.C. §5253(b)(1), STD benefits for participating employees shall commence upon the exhaustion of the calendar day elimination period. The elimination period shall begin on the first day following the onset of the participating employee's physical or mental incapacity. The calendar day elimination period does not have to be satisfied consecutively however, if an employee returns to work for one day or less during the calendar day elimination period, but cannot continue to work thereafter, the period worked shall not be considered to have interrupted the calendar day elimination period.
- 4.2 Pursuant to 29 Del.C. §5253(b)(1), the calendar day elimination period must commence and conclude within normal working periods for employees who work less than 12 months per calendar year. "Normal working periods" are the scheduled working days of the participating employee.
- 4.3 Pursuant to 29 Del.C. §5253(b)(5), if a participating employee returns to the employee's position on a full time basis for 15 consecutive calendar days or longer, any succeeding period of disability for which the participating employee shall become eligible shall constitute a new period of STD with a corresponding calendar day elimination period.
- 4.4 There is no pre-existing conditions limitation in the STD program.

5.0 Claim Filing Requirements

- 5.1 Pursuant to 29 Del.C. §5253(b)(7), once an employee exhausts their elimination period, the employee will be deemed to have applied for benefits under this section and shall not be eligible to utilize paid leave in lieu of application for STD.
- 5.2 All employees enrolled in DIP who expect to be out of work for the length of the calendar day elimination period are required to file a STD claim, even if the employee applied for and/or is receiving Workers' Compensation (WC) benefits or Other Income Benefits defined in the STD benefits booklet per Delaware Code.
- 5.3 Employees are required to immediately report all absences from work to their supervisor and are required to stay in contact with their supervisor and Human Resource office during all absences from work. For specific reporting time frames, merit employees should refer to the Merit Rules. Non-merit employees should refer to their employing organization's leave policy. All requested documentation must be provided. Supervisors are required to immediately report an employee's absence from work to their Human Resource office. The Human Resource office must send a letter to the employee via certified mail return receipt requested no later than the fifth calendar day of absence from work to remind the employee of their STD claim filing requirement in the event the employee expects to be out of work for at least the length of the elimination period.
- 5.4 Employees must contact their physician(s) to authorize the release of medical information required by the Return to Work (RTW) Coordinator and/or the DIP insurance carrier and/or third party administrator (Administrator) selected to administer and/or insure the program by the SEBC pursuant to 29 Del.C. §5254. It is the employee's responsibility to be sure that his or her medical documentation is submitted to the DIP insurance carrier and/or Administrator and the RTW Coordinator as requested.
- 5.5 Participating employees are responsible for the payment of fees requested by their physician(s) for the release of preliminary medical information and/or subsequent attending physician statements (APs).
- 5.6 Medical documentation by the employee's physician(s) must be submitted to determine benefit payment. A physician's return to work note will not be sufficient.

6.0 Coverage

- 6.1 For a disability caused by a covered sickness and/or accident, STD benefits commence after completion of the calendar day elimination period for up to a maximum benefit period of 182 calendar days starting with the employee's date of disability per Delaware Code. The 182 calendar day STD benefit period includes the calendar day elimination period.
- 6.2 The employing organization is responsible for providing the DIP insurance carrier and/or Administrator, with the last day worked and any partial day(s) worked information, if applicable, for each claimant.
- 6.3 "Total Disability" or "Totally Disabled" means the employee is prevented by accidental bodily injury, sickness, mental condition, substance abuse or pregnancy from performing the essential duties of their occupation, and as a result, the employee is earning less than 80% of his or her base rate of compensation received on the last day of employment before becoming disabled.
 - 6.3.1 IMPORTANT NOTE: Weekly earnings means the employee's usual rate of pay, not including commissions, bonuses, shift differential pay, overtime pay or any other fringe benefit or extra compensation. If disabled, weekly earnings will be the rate in effect on the last day as an active full-time employee before becoming totally disabled.
- 6.4 The STD program does not cover:
 - 6.4.1 Injury, sickness, mental condition, substance abuse, or pregnancy not being treated by a physician or surgeon;
 - 6.4.2 Disability caused by or contributed to by war or act of war, declared or not;
 - 6.4.3 Disability caused by commission of or attempt to commit a felony, or to which a contributing cause was the participating employee being engaged in an illegal occupation and/or activity;
 - 6.4.4 Disability caused by or contributed to an intentionally self-inflicted injury, and;
 - 6.4.5 Injury sustained as a result of doing work for pay or profit from another employer.
- 6.5 Bus drivers who are contractually required to remain symptom free from disabling illness and/or injury for one year starting with the date of disability will be approved for STD benefits for up to the maximum 182 calendar day benefit period.

7.0 Less Than Twelve Month Educational Employees Only (Institutions of Higher Education, School Districts, Charters Schools, Dept. of Education)

- 7.1 Employees who develop a disability during their normal working period are eligible to file an STD claim and receive benefits through the end of the current school year assuming the employee is able to satisfy the

calendar day elimination period before the last day of the school year. Should the disability continue through the employee's non-working period and into the next school year, the non-working time period counts toward satisfaction of the 182 calendar day STD benefit period.

- 7.2 Employees who are unable to satisfy the calendar day elimination period before the end of the current school year will resume completion of the elimination period as of the first day of the next school year.
- 7.3 Disabilities that begin during a non-working period may not be claimed until the normal working period resumes. The actual date of the employee's disability will remain unchanged however the elimination period begins the first working day of the new school year.

8.0 Benefit Payment

- 8.1 STD benefit payments are paid by the employing organization to employees whose STD claims have been approved.
- 8.2 The DIP insurance carrier and/or Administrator shall notify the employee of the initial determination of the employee's eligibility for STD benefits in writing by certified mail, return receipt requested within 10 days of the determination.
- 8.3 STD benefits shall be payable at a rate of up to 75% of the participating employee's creditable compensation during the period the employee has a disability.
- 8.4 Pursuant to 29 Del.C. §5253(b)(3), creditable compensation during periods an employee receives STD benefits shall include general salary increases awarded or reductions in salary instituted during the period of Short Term disability coverage.
- 8.5 Creditable compensation during the period an employee has a disability also includes hazardous duty pay if applicable. No other additional types of pay are included in the payment of STD benefits.
- 8.6 The amount of any benefit for loss of income provided to an employee or to an employee's family as a result of a period of disability for which the employee is claiming STD benefits will be an offset to the employee's STD benefit payment. This includes any such benefits for which the employee or the employee's family is eligible or is paid to the employee, the employee's family, or to a third party on behalf of the employee. This includes the amount of any benefit for loss of income from:
 - 8.6.1 The United States Social Security Act, the Civil Service Retirement System, the Railroad Retirement Act, the Jones Act, the Canada Pension Plan, the Quebec Pension Plan or similar plan or act that a claimant, a claimant's spouse, or a claimant's child(ren) are eligible to receive because of the employee's disability;
 - 8.6.2 Any plan or arrangement of coverage, whether insured or not, as a result of employment by or association with the State of Delaware, or as a result of membership in or association with any group, association, union or other organization;
 - 8.6.3 The Veteran's Administration or any other foreign or domestic governmental agency for the same disability;
 - 8.6.4 Any governmental law or program that provides disability or unemployment benefits as a result of the employee's job with the State of Delaware;
 - 8.6.5 An individual insurance policy where the premium is wholly or partially paid by the State of Delaware;
 - 8.6.6 Any temporary or permanent disability benefits under a Workers' Compensation law, occupational disease law, or similar law;
 - 8.6.7 Compulsory "no-fault" automobile insurance; or
 - 8.6.8 The portion of a settlement or judgment, minus associated costs, of a lawsuit that represents or compensates for the employee's loss of earnings for the same disability.
 - 8.6.9 Payment for Rehabilitative employment by the State of Delaware or other employer. All income received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier and/or Administrator.
- 8.7 Any general increase in benefits required by law that a claimant is entitled to receive under any Federal Law will not reduce the STD Benefit payable for a period of Total Disability that began prior to the date of such increase.

IMPORTANT NOTE: Other Income Benefits also mean any payments that are made to the employee, the employee's family, or to a third party on behalf of the employee, pursuant to any:

- disability benefit under the Employer's Retirement Plan;
- permanent disability or impairment benefits under a Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges of such benefits;
- portion of a settlement or judgment, minus associated costs, of a lawsuit that represents or compensates for the claimant's loss of earnings;

retirement benefit from a Retirement Plan that is wholly or partially funded by employer contributions, unless:

the claimant was receiving it prior to becoming Disabled; or

the claimant immediately transfers the payment to another plan qualified by the United States Internal Revenue Service for the funding of a future retirement.

- 8.8 Employees enrolled in and receiving STD compensation shall receive up to a maximum of 100% of pre-disability base pay from all sources. If the employee is otherwise eligible for holiday pay or a paid leave other than annual, sick, compensatory or donated leave, the employee will be granted 100% pay on the day in question without a residual. All leave supplements will be calculated on a per pay basis.
- 8.9 Calendar days used to satisfy the STD elimination period for employees who work alternate schedules are converted to a Monday through Friday schedule as all STD benefit payments are calculated using a 5 day work week. Once the employee has satisfied the calendar day elimination period, the STD program will pay 1/5 of the weekly amount for each weekday the employee is disabled during a pay period.
- 8.10 The minimum weekly STD benefit will be the greater of \$25.00 or 10% of the gross STD benefit before the deduction of other income benefits. If the employee is receiving 100% of his or her pre-disability pay from any other source which is an offset, a minimum STD benefit will not be paid.
- 8.11 If while covered under this program an employee develops a partial or residual disability and works on a part-time or limited duty basis, the employee will be entitled to a residual (partial) disability benefit. The employing organization is required to report hours worked by the employee to the DIP insurance carrier and/or Administrator on a weekly basis. The DIP insurance carrier and/or Administrator will calculate residual disability benefits for each claimant and promptly provide the results of the calculation to the employing organization. All income and/or benefit received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier and/or Administrator by the employee.
- 8.12 If a participating employee returns to the employee's position on a full-time basis, as defined by the Committee, for 15 consecutive calendar days or longer, any succeeding period of disability for which the employee shall be approved for STD benefits shall constitute a new period of short-term disability with a new corresponding calendar day elimination period. If recurrent periods of disability are due to the same or a related cause; and separated by less than 15 consecutive day(s) of work as an active full-time employee, they will be considered to be the same period of disability.
- 8.13 If while receiving STD benefits an employee should experience a disability due to a new disability, the 182nd calendar day associated with the first disability will not be extended and the plan's exclusions will apply to the new disability. The employee is immediately required to report the new disability to their supervisor, Human Resource office and to the DIP insurance carrier and/or Administrator.
- 8.14 The DIP insurance carrier and/or Administrator shall provide each employing organization with an Explanation of Benefits (EOB) statement on each claimant illustrating the following information:
- 8.14.1 approval dates;
- 8.14.2 payment amount, and;
- 8.14.3 offset information
- 8.15 It is the employing organization's responsibility to promptly pay STD benefits to their employees. Overpayment and/or underpayment amounts must be immediately reported to the DIP insurance carrier and/or Administrator and to the employee by the employing organization. All overpayments must be immediately collected by the employing organization and returned to the Pension Office via the State's payroll system (PHRST) or other accepted payroll process for tax reporting purposes.
- 8.16 It is the employing organizations responsibility to promptly notify the DIP insurance carrier and/or Administrator of any and all retroactive awards from other programs awarded to STD claimants.
- 8.17 It is the employee's responsibility to promptly notify and repay the State of Delaware for all overpayments including income paid as an offset during the STD and/or LTD benefit period.

9.0 Leaves (Merit Agencies Only)

- 9.1 Provided the employee files their STD claim no later than the 15th calendar day from the date of disability and abides by the employing organization's policy and procedures regarding attendance and calling out absent, the employee may continue to use available sick and/or annual leave to be paid until the STD claim is approved, if not approved by the exhaustion of the STD calendar day elimination period.
- 9.2 Pursuant to 29 Del.C. §5253(b)(4), an employee may utilize annual, sick, compensatory, or donated leave to supplement STD benefits to equal 100% of pre-disability base pay for a maximum benefit period of 182 calendar days.

- 9.3 Employees applying for STD benefits must also apply for the Family Medical Leave Act (FMLA).
- 9.4 Donated leave may be used to pay employees during the calendar day STD elimination period. However, regardless of whether a claim was filed with the DIP insurance carrier and/or Administrator, donated leave is not to continue following the calendar day elimination period until the employee's STD claim is in an approved status. Upon approval of the employee's STD claim, the employing organization may apply donated leave retroactively to supplement the STD benefit payment.
- 9.5 Employees on FMLA and/or donated leave must comply with the rules that apply to those programs.
- 9.6 If an employee is otherwise eligible for holiday pay or a paid leave other than identified in 29 **Del.C.** §5253(b)(4), the employee will be granted 100% pay on the day in question without a residual. All leave supplements will be calculated on a per pay basis.
- 9.7 Employees on approved STD may choose to use accrued leave earned each month in its entirety or to save the accrual for payout upon the commencement of LTD or service pension. Leave rules for FMLA and donated leave take precedence.
 - 9.7.1 Employees who exhaust leave accrual each month will accrue leave at 100% for the given month.
 - 9.7.2 Employees who decide to save their leave accrual will accrue leave at 75% for the given month.
- 9.8 If the employee is in a "no pay" status during the STD elimination period, leave accrual stops. The employee should receive leave accrual prorated for the portion of the month last worked and a prorated amount of leave for the portion of the month in which STD benefits were received.
- 9.9 Employees remain subject to the provisions of Merit Rule 5.2.4 regarding leave carryover.
- 9.10 Upon the exhaustion of the maximum STD benefit period, any employee, except those entitled to hazardous duty pay as defined in 29 **Del.C.** §5933(c), shall no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in 29 **Del.C.** §5933(c) who exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible. The employee has two options with respect to remaining accrued leave.
 - 9.10.1 Escrow Leave. Prior to the commencement of LTD benefits, the employee may make written request to the employing organization to escrow accrued annual and sick leave for a maximum period of six months. If the member returns to full-time State employment in a benefit eligible position for 30 calendar days within the 6 month escrow period, the member's leave balances will be restored. If the member does not return to State employment in a benefit eligible position, the escrowed leave will be paid to the member based on the rules in place by the member's former employing organization.
 - 9.10.2 Payout of Leave. Upon the commencement of LTD benefits, the employee shall be eligible to receive a payout of accrued leave based on the rules in place by the employing organization. If the member is subsequently rehired or reinstated by the State of Delaware into a benefit eligible position, the member's leave balance will be zero on the date of rehire or reinstatement.
- 9.11 Employees who supplement the STD benefit payment with annual, sick, compensatory or donated leave may defer any portion of the supplement into the Deferred Compensation program. Employees may not defer any portion of the STD benefit payment to the Deferred Compensation program.

10.0 Termination Of Benefits

- 10.1 An employee's STD benefits will terminate upon the earliest of:
 - 10.1.1 The date the program terminates;
 - 10.1.2 The date the employee no longer meets the definition of eligibility;
 - 10.1.3 The last day of the period for which the employee fails to pay contributions, if required by the program; or
 - 10.1.4 The date in which the State of Delaware ceases to offer an STD program; or
 - 10.1.5 Upon the exhaustion of the maximum STD benefit period, any employee, except those entitled to hazardous duty pay as defined in 29 **Del.C.** §5933(c), shall no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in 29 **Del.C.** §5933(c) who exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible.
 - 10.1.6 The date the employee is no longer covered by the Delaware State Employees' Pension Plan pursuant to 29 **Del.C.** §5519.

10.1.7 The date the employee is discharged for cause.

11.0 Appeals

- 11.1 Claimants whose STD claims are not in an approved status and have not returned to work are entitled to file an appeal with the DIP insurance carrier and/or Administrator. Claimants who file an appeal are required to immediately advise their supervisor and Human Resource office of the status of their appeal for benefits.
- 11.2 Pursuant to 29 Del.C. §5258, within 90 days of the postmark date of the carrier's written notice of its determination regarding STD benefits, a claimant may appeal any determination of disability benefits by filing a written petition setting forth with particularity the grounds for appeal with the DIP insurance carrier and/or Administrator. The DIP insurance carrier and/or Administrator has the authority to reverse all or any part of its initial STD benefit determination and shall notify the claimant, the employing organization and the Statewide Benefits Office in writing by certified mail, return receipt requested within 10 days of the determination.
- 11.3 Pursuant to 29 Del.C. §5258, within 20 days of the postmark date of the DIP insurance carrier and/or Administrator's determination of benefits being appealed, a claimant may file a second level appeal by filing a written petition setting forth with particularity the grounds for second appeal to the Appeals Administrator at the Statewide Benefits Office, who shall conduct an informal review, and who shall have the authority to reverse all or any part of the decision of the DIP insurance carrier and/or Administrator to deny benefits. The claimant's written appeal should be addressed and mailed to:

Appeals Administrator
RE: DISABILITY APPEAL
Statewide Benefits Office
500 W. Loockerman Street, Suite 320
Dover, DE 19904
Tel: (302) 739-8331
Fax: (302) 739-8339

The Appeals Administrator or designee, shall issue a final written decision and shall mail it to the claimant by certified mail, return receipt requested, within 30 days of speaking with the claimant.

- 11.4 Pursuant to 29 Del.C. §5258, if the Appeals Administrator affirms the DIP insurance carrier and/or Administrator's decision to deny disability benefits or any part thereof, a claimant may file an appeal to the SEBC within 20 days of the postmark date of the notice of the determination from the Appeals Administrator by filing a written petition with the SEBC setting forth with particularity the grounds for the appeal. The claimant's written appeal should be addressed and mailed to:

Chair, State Employee Benefits Committee (SEBC)
RE: DISABILITY APPEAL
Office of Management and Budget
Haslet Armory, Third Floor
122 William Penn Street, Suite 301
Dover, DE 19901
Tel: (302) 739-4204
Fax: (302) 739-3342

The SEBC may designate an appropriate representative from the Office of Management and Budget as a hearing officer to hear evidence presented by the employee or, in its sole discretion, it may decide to hear the appeal directly. The Committee or the hearing officer, as the case may be, shall determine whether the determination to deny benefits complies with the applicable disability plan adopted by the Committee. The Hearing officer and/or Committee shall have all of the following powers in respect to the conduct at the hearing:

- 11.4.1 To issue subpoenas and administer oaths in any proceeding. Any subpoena process order or any notice or paper requiring service shall be sent by certified mail, return receipt requested;
- 11.4.2 To examine persons as witnesses, take evidence, require the production of documents, and do all other things pursuant to law which are necessary to determine the appeal. In proceedings before the Committee or its hearing officer, if any person neglects to produce any pertinent document, neglects or refuses to appear after having been subpoenaed, refuses to testify or be examined, disobeys or resists any lawful order or process, or intentionally obstructs the hearing, the Committee shall certify facts under the signature of its chairperson or the hearing officer to any judge of the Superior Court, which judge shall there upon hear evidence as to the acts complained of. The judge shall, if the judge deems the evidence so warrants, issue an order requiring such persons to testify or produce documents or otherwise comply

with the requirements of the Committee, as the case may require. Refusal to comply with the order of the Court shall constitute contempt of Court;

11.4.3 Where the Committee assigns the matter to the hearing officer, the hearing officer shall decide the matter and prepare a report containing the findings of fact, and conclusions of law, within 60 days of the hearing, and shall transmit the report, with the full record of the hearing, to the Committee. The Committee may accept or modify the hearing officer's final report, and shall notify the parties of its action by certified mail, return receipt requested within 60 days.

11.4.4 If the Committee elects to hear the matter directly and not to assign it to the hearing officer, it shall issue its final decision containing findings of fact and conclusions of law, within 60 days of the hearing, and shall notify the parties of its action by certified mail, return receipt requested.

11.5 Pursuant to 29 Del.C. §5258, within 30 days of the postmark date of the Committee's determination to deny benefits on appeal, a claimant may file a final action to Superior Court. The appeal shall be on the record.

12.0 Employment Termination

12.1 The employing organization is required to fully complete a Vested LTD Pension Application prior to the exhaustion of the STD benefit period. The completed form must be submitted to the Office of Pensions for processing.

12.2 Employees leaving State service whose application for LTD benefits has not been approved, are eligible for continuation of their health care coverage(s) under COBRA. Employees should contact their Benefits Representative or Human Resource Office for details of this continuation option. Please refer to the Group Health Insurance Eligibility and Enrollment Rules for full details.

12.3 Prior to the commencement of LTD benefits, the employee shall be eligible to make a written election to escrow their accrued leave for a period of 6 months. See subsection 9.10 for a complete description.

13.0 Long Term Disability (LTD)

13.1 For employees hired on or after January 1, 2006, no LTD benefit will be payable for any disability that is due to, contributed to, by, or results from a pre-existing condition unless such disability begins:

13.1.1 After the last day of 12 consecutive month(s) while insured in DIP during which the employee received no medical care for the pre-existing condition; or

13.1.2 After the last day of 12 consecutive month(s) during which the employee has been continuously insured under this plan.

13.2 Claimants may not receive LTD benefits and a service pension at the same time.

14.0 Elimination Period

14.1 The elimination period is the period of time the employee has a disability before benefits can be paid. It is the last to be satisfied of the following:

14.1.1 The first 182 consecutive calendar days of any one period of disability; or

14.1.2 The exhaustion of the 182 calendar day STD benefit period.

14.2 The elimination period shall commence on the first day following the onset of a disability.

15.0 Coverage

15.1 LTD benefits are paid by the DIP insurance carrier and/or Administrator on a monthly basis directly to the claimant.

15.2 "Disability" or "disabled" during the first 24 months following the elimination period means the claimant is prevented by accidental bodily injury, sickness, mental condition, substance abuse or pregnancy from performing one or more of the essential duties of the claimant's occupation and, as a result, the claimant's current monthly earnings are less than 80% of pre-disability earnings. After the exhaustion of the first 24 months of disability, the claimant is prevented from performing one or more of the essential duties of any occupation. The claimant's failure to pass a physical examination required to maintain a license to perform the duties of the claimant's occupation alone, does not mean that the claimant has a disability.

15.3 The LTD program does not cover:

15.3.1 Disabilities not under the regular care of a physician;

15.3.2 Disability that is caused or contributed to by war or an act of war (declared or not);

15.3.3 Disability caused by commission of or attempt to commit a felony, or to which a contributing cause was the participating claimant's being engaged in an illegal occupation;

15.3.4 Disability caused by or contributed to by an intentionally self-inflicted injury, and;

15.3.5 Injury sustained as a result of doing work for pay or profit from another employer.

15.4 The maximum duration of LTD benefits is as follows:

<u>Age When Disabled</u>	<u>Benefit Duration (Months)</u>
<u>Prior to age 60</u>	<u>To age 65</u>
<u>60</u>	<u>60</u>
<u>61</u>	<u>48</u>
<u>62</u>	<u>42</u>
<u>63</u>	<u>36</u>
<u>64</u>	<u>30</u>
<u>65</u>	<u>24</u>
<u>66</u>	<u>21</u>
<u>67</u>	<u>18</u>
<u>68</u>	<u>15</u>
<u>69+</u>	<u>12</u>

15.5 If an individual has a disability because of:

15.5.1 mental condition that results from any cause;

15.5.2 any condition that may result from mental condition;

15.5.3 alcoholism; or

15.5.4 the non-medical use of narcotics, sedatives, stimulants, hallucinogens, or any other such substance, then, subject to all other policy provisions, LTD benefits will be payable:

15.5.4.1 only for so long as the claimant is confined in a hospital or other place licensed to provide medical care for the disabling condition; or

15.5.4.2 when the claimant is not so confined, a total of 24 months for all such disabilities during the individual's lifetime.

15.6 Pursuant to 29 Del.C. §5524(d), DIP participants vested in the Delaware State Employees' Pension Plan as of December 31, 2005 may be enrolled in the disability pension plan upon the exhaustion of LTD benefits due to mental condition and/or substance abuse. Members will be mailed an authorization form to complete and return to the DIP insurance carrier and/or Administrator. Upon receipt, the DIP insurance carrier and/or Administrator will send a copy of the member's disability file to the Pension Office for processing.

16.0 Benefit Payment

16.1 LTD benefits shall be paid in an amount up to 60% of the claimant's creditable compensation the day prior to the onset of the disability.

16.2 In no event shall a claimant utilize earned leave to supplement LTD benefit payments, unless the claimant has been rehired and is working on a part-time basis.

16.3 As defined in 29 Del.C. §5253(c)(3), LTD benefits shall not include general salary increases during the period of long term disability. LTD benefits may be increased annually by an amount approved by the State Employee Benefits Committee (SEBC).

16.4 Any claimant who applies for LTD benefits must apply to the Social Security Administration for disability benefits. LTD benefits shall be reduced by any disability benefits received from the Social Security Administration.

16.5 The amount of any benefit for loss of income provided to a claimant or to a claimant's family as a result of a period of disability for which the claimant is requesting LTD benefits will be an offset to the claimant's LTD benefit payment. This includes any such benefits for which the claimant or the claimant's family is eligible or is paid to the claimant, the claimant's family, or to a third party on behalf of the claimant. This includes the amount of any benefit for loss of income from:

16.5.1 temporary disability benefits under Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges for such benefits;

16.5.2 governmental law or program that provides disability or unemployment benefits as a result of the employees job with the State;

16.5.3 plan or arrangement of coverage, whether insured or not, or as a result of employment by or association with the employer or as a result of membership in or association with any group, association, union or other organization;

16.5.4 mandatory "no-fault" automobile insurance plan;

16.5.5 disability benefits under:

- 16.5.5.1 the United States Social Security Act or alternative plan offered by a state or municipal government;
- 16.5.5.2 the Railroad Retirement Act;
- 16.5.5.3 the Canada Pension Plan, the Canada Old Age Security Act, the Quebec Pension Plan or any provincial pension or disability plan; or
- 16.5.5.4 similar plan or act, that the claimant, the claimant's spouse and children are eligible to receive because of the claimant's disability;

16.5.6 Disability benefit from the Veteran's Administration, or any other foreign or domestic governmental agency:

- 16.5.6.1 that begins after the claimant developed a disability; or
- 16.5.6.2 if the claimant were receiving the benefit before becoming Disabled, the amount of any increase in the benefit that is attributed to the claimant's disability.

16.5.7 Payment for Rehabilitative employment by the State of Delaware or other employer. All income received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier and/or Administrator.

IMPORTANT NOTE: Other Income Benefits also mean any payments that are made to the claimant, the claimant's family, or to a third party on behalf of the claimant, pursuant to any:

- disability benefit under the Employer's Retirement Plan;
- permanent disability or impairment benefits under a Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges of such benefits;
- portion of a settlement or judgment, minus associated costs, of a lawsuit that represents or compensates for the claimant's loss of earnings;
- retirement benefit from a Retirement Plan that is wholly or partially funded by employer contributions, unless:
 - the claimant was receiving it prior to becoming Disabled; or
 - the claimant immediately transfers the payment to another plan qualified by the United States Internal Revenue Service for the funding of a future retirement.

16.6 Claimants receiving LTD benefits are responsible for the accurate and timely payment of all health care premiums. Please refer to the Group Health Insurance Eligibility and Enrollment Rules for full details.

17.0 Termination of Benefits

17.1 A claimant's LTD benefit will terminate upon the earliest of:

- 17.1.1 The date the claimant is no longer disabled as determined by the DIP insurance carrier and/or Administrator;
- 17.1.2 The date the Group Insurance Policy terminates;
- 17.1.3 The date premium payment is due but not paid, if applicable ;
- 17.1.4 The date the claimant is no longer a member of the Delaware State Employees' Pension Plan, or;
- 17.1.5 The date the claimant elects service retirement from the State of Delaware.

18.0 Appeals

18.1 The claimant or the claimant's representative may appeal to the DIP insurance carrier and/or Administrator for a full and fair review of any LTD benefit determination. The claimant may:

- 18.1.1 Request a review upon written application to the DIP insurance carrier and/or Administrator within 180 days of the claim denial;
- 18.1.2 Request copies of all documents, records, and other information relevant to the claim; and
- 18.1.3 Submit written comments, documents, records and other information relating to the claim.

18.2 The DIP insurance carrier and/or Administrator will make a decision no more than 45 days after receiving the claimant's appeal unless the DIP insurance carrier and/or Administrator determines special circumstances that require an extension of time to process the appeal. If the appeal requires an extension, the DIP insurance carrier and/or Administrator will make a decision no more than 90 days after receiving the claimant's appeal. The written decision will include specific references to policy provisions on which the decision is based.

19.0 Other Benefits During Disability

19.1 Short Term Disability (STD)

19.1.1 Employees receiving STD benefits accrue pension creditable service for each month the employee's STD claim is in an approved status.

19.1.2 Employees receiving STD benefits under 29 Del.C. §5253(b) will be treated as "regular officers and employees" under these regulations and are eligible for enrollment in the Group Health Insurance Program with State Share contributions, as applicable. STD beneficiaries are subject to the Group Health Insurance Program Eligibility and Enrollment Rules.

19.2 Long Term Disability (LTD)

19.2.1 Claimants on approved LTD continue to accrue pension creditable service for each month the LTD claim is in an approved status.

19.2.2 The State of Delaware's pension benefit and the DIP are separate programs. At the point an individual begins receiving LTD benefits, the individual can terminate their membership in the Delaware State Employees Pension Plan (SEPP) by withdrawing contributions. Should this occur, the individual forfeits their right to a service pension and all accompanying fringe benefits such as health care after LTD ceases.

19.2.3 LTD claimants receiving benefits under 29 Del.C. §5253(c) will be treated as "eligible pensioners" and are eligible for enrollment in the Group Health Insurance Program with State Share contributions, as applicable. LTD beneficiaries are subject to the Group Health Insurance Plan Eligibility and Enrollment Rules.

19.3 Return To Work (RTW)

19.3.1 Short Term Disability – Return To Work (RTW)

19.3.1.1 Pursuant to 29 Del.C. §5257(a), once an employee has been determined to have the ability to return to employment by the Committee, the employee will receive the following assistance:

19.3.1.1.1 Merit employees may be placed in any vacant merit position, for which they qualify, by the Office of Management and Budget.

19.3.1.1.2 Nonmerit state employees, and employees from nonstate employers will be placed by that employer into a vacant position within their respective employing organization for which the employee qualifies.

19.3.1.2 The employee must have a RTW Authorization from his/her attending physician to be permitted to return to work. Authorization forms may be obtained from the RTW Coordinator in the Statewide Benefits Office or from the employing organization if a specific form is required. A RTW Authorization is required PRIOR to the employee's first day back to work.

19.3.1.3 Return to work assistance for employees enrolled in DIP who expect to be out of work for less than the STD calendar day elimination period are eligible to utilize the services of the RTW Coordinator from the Statewide Benefits Office.

19.3.1.4 There is a Return to Work process that shall be followed to assess and plan for keeping or returning an employee with a disability to work. The return to work process for all employing organizations shall be as follows:

19.3.1.4.1 Same job, same employer

19.3.1.4.2 Same job with modifications, same employer

19.3.1.4.3 Same job, different employer

19.3.1.4.4 Same job with modifications, different employer

19.3.1.4.5 Different job, same employer

19.3.1.4.6 Different job, different employer

19.3.1.4.7 Retraining and Education

19.3.1.5 The employee is eligible to receive assistance from the RTW Coordinator and the employing organization if temporary restrictions and limitations prevent an employee from performing his/her job at full capacity or should an assistive device be necessary. The employee will return to modified, transitional, or full duty work as soon as approved to do so by a medical provider as well as with the approval of the employing organization.

19.3.1.6 If the employing organization is not able to accommodate the employee with temporary restrictions or limitations, the employing organization must notify the RTW Coordinator stating the reason the accommodation cannot be granted. Once an employee has been released to modified duty or regular work, the employee is required to return to work at such time that the employing organization is able to accommodate the restrictions or limitations. Employees should work closely with the RTW Coordinator and the employing organization if modified duty is being requested.

19.3.1.7 When looking for options beyond the employee's own job, the RTW Coordinator and employing organization shall consider the employee's abilities, anticipated absence duration, training and

experience. If placement cannot be accommodated, the employing organization must provide a written explanation to the RTW Coordinator.

19.3.1.8 If the employing organization is not able to accommodate the employee's restrictions so that he/she may return to work, the employee may be eligible for a continuation of STD benefits provided the employee is still unable to perform the essential duties of their own occupation.

19.3.1.9 If the employing organization agrees to accommodate the temporary restrictions or limitations recommended by the employee's medical provider while recovering from disability and the employee refuses to return to work, benefits may be discontinued.

19.3.1.10 When appropriate, the RTW Coordinator may refer employees to the Division of Vocational Rehabilitation when it has been determined by a medical professional that an employee will no longer have the ability to perform the essential functions of the position on a permanent basis.

19.3.1.11 When assigned to a rehabilitation program, the employee is required to maintain a treatment schedule corresponding to medical restrictions and/or normal working hours as designed by the location.

19.4 Long Term Disability (RTW)

19.4.1 Pursuant to 29 Del.C. §5257(b), once an individual has been determined to have the ability to return to employment by the committee, the individual will receive the following assistance:

19.4.1.1 Former merit employees enrolled in and previously deemed eligible for the Long-Term Disability Program may, when available and appropriate, be placed by the Office of Management and Budget in any merit position, for which they qualify without a certification list, as long as the paygrade does not exceed their paygrade at the time of their acceptance into and eligibility for the Short-Term Disability Program. Exceptions to the paygrade limitation may be made for vacancies for which a documented shortage of qualified applicants exists.

19.4.1.2 Former non-merit employees enrolled in and previously deemed eligible for the Long-Term Disability Program will be placed by their previous employer into a vacant position within their respective agency for which they qualify.

19.4.2 Employees previously employed in a Merit position, must contact the RTW Coordinator at the Statewide Benefits Office within 15 days of their release to return to work and/or the termination of their LTD benefit.

19.4.3 Former Merit employees with documented performance /conduct issues prior to their disability may be determined ineligible for placement or RTW assistance. Refer to subsection 19.3.1.4 for the return to work process.

19.4.4 Former Merit employees who are returning to State employment from an approved LTD claim are subject to Merit Rule 9.5 which states "Upon reinstatement, employees who left the Merit System shall be required to serve an initial probation period."

19.4.5 When an individual is rehired from LTD into a Merit position on a reduced work schedule and the reduced work schedule is expected and/or exceeds 30 calendar days, the employee should be considered permanent part-time for the purposes of holiday pay and leave accruals which shall be pro-rated based on scheduled hours. The status of permanent part-time will continue until such time as the employee is released to work for a normal work week of 37.5 or 40 hours.

19.4.6 Employees formerly employed by a school district, charter school, institution of higher education or other nonmerit employing organization, should contact their former Human Resource department for assistance in placement.

19.4.7 When returning to work from LTD, former merit employees will be considered a new hire. Once rehired, the employee will accrue leave (vacation/sick) at the same rate as when the previous employment terminated.

19.4.8 If an LTD beneficiary is offered a position for which the employee is qualified and the employee declines the position, RTW assistance will terminate.