

## **Guidance on Decisions regarding Ill Health Retirement**

### First Instance Decision Maker - Employer Duties

When an ill-health assessment is undertaken to ascertain if a member meets the LGPS criteria for ill-health retirement, it is the 'First Instance Decision-maker's responsibility to;

- Tell the member about their rights, about how the process works and to keep them informed of progress throughout the process.
- Obtain all relevant medical information from the member and commission further reports as necessary, to ensure that an Independent Registered Medical Practitioner (IRMP) is given access to all available evidence to provide a report indicating whether they believe that the member meets the criteria for ill-health retirement; according to the Regulations.
- If there is uncertainty about the prognosis, due to other treatments which have yet to be tried, the first instance decision-maker must ask the IRMP to provide professional opinion as to the expected efficacy of those treatments. If there are specialist reports due to be provided, the decision-maker must take these into account before making a decision.
- Upon receipt of the certificate and report from the IRMP, the decision-maker should weigh up the report along with all of the evidence, and make a decision based on these and applying the right test i.e. not the criminal law test of "beyond a reasonable doubt", but the civil law test of "on the balance of probabilities".
- The decision-maker has the right to give more weight to some evidence than others when considering their decision, i.e. a specialist report may hold more weight than the opinion of a GP, but the advice of an occupational expert may override both.
- When exercising discretion the decision-maker must apply the law correctly and consider all relevant information. It is also important to ignore any irrelevant information and ask the right questions. The Appointed Person at Stage 1 of the IDRPs will be checking that the resulting decision is not irrational or perverse.
- When the decision letter is provided to the member it must explain the next steps in the process, so that they know their right of redress if they do not agree with the decision, as required under Regulation 71 "Notification of first instance decisions".

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#### **Checklist**

1. Have you ensured that you have obtained all of the available evidence, commissioned further reports and/or given the member the opportunity to provide more?
2. Has the IRMP applied the right test i.e. 'on the balance of probabilities'?
3. Have you reviewed and based your decision on all of the evidence or just the IRMP's report or certificate?
4. Where you have doubts about the advice, have you sought a further report/ clarification?
5. Has the IRMP considered the question of untried treatments properly?
6. Have you clearly explained the decision to the member and included information about the next steps in the process?

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### IDRP Stage 1 - Appointed Person Duties

When a member does not agree with the decision of the first instance decision maker and invokes stage 1 of the IDRP process, as the appointed person you must;

- Tell the member about their rights, how the process works and keep them informed of progress.
- Request the first instance decision maker to provide you with a copy of all of the relevant medical information used to make their decision, so that you can ensure that they have applied the right test; i.e. 'on the balance of probabilities' and revert to them to ask for further reports if necessary.
- If the first instance decision maker has failed to properly consider all relevant medical information or there is uncertainty about the prognosis, due to other treatments which have yet to be tried, revert the case back to the first instance decision maker to, a) obtain the advice of their IRMP as to the efficacy of those treatments (in their professional opinion) and b) revisit their decision on receipt of that advice.
- Once you have made your decision, explain the next steps in the process to the member and inform them of their right of further redress, should they not agree with the decision, as required under Regulation 72 "Applications to resolve disagreements".

### **Checklist**

1. Has the IRMP / first instance decision maker applied the right test i.e. 'on the balance of probabilities'?
2. Has the first instance decision maker based their decision on all of the evidence or just the IRMP's opinion or certificate?
3. Has the first instance decision maker made the decision or simply adopted the IRMP's opinion without question?
4. Where there was not enough information to make an informed decision; did the employer seek clarification from the medical advisor or ask for another opinion?
5. Has the IRMP considered the question of untried treatments properly?
6. Did the first instance decision maker explain the decision to the member properly and include information about the next steps in the process?