



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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| MEETING DATE | 6-30-03 |
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| AGENDA ITEM | A.9. |
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MEMORANDUM

June 19, 2003

TO: Members of the PERS Board

FROM: Yvette Elledge, Rules Coordinator

SUBJECT: Adoption of Permanent Rule
OAR 459-005-0180, *Incapacity of Members, Beneficiaries and Alternate Payees*

BACKGROUND

At its meeting on March 31, 2003, the Board authorized staff to begin the rulemaking process on proposed new rule OAR 459-005-0180. This proposed rule pertains to claims of incapacity of PERS members, beneficiaries and alternate payees. It is prompted by recent contested case hearings in which a member, beneficiary or alternate payee claims a member was incapable of making proper decisions at the time he or she submitted certain forms to PERS, and therefore PERS should consider those forms to be invalid.

The attached proposed rule states that under these circumstances, PERS will consider such a member, beneficiary or alternate payee incapacitated and void the decision(s) in question only if directed by a court to do so.

SUMMARY OF HEARINGS AND ATTENDANCE

A public hearing was held on May 21, 2003, in Tigard. No one attended the meeting.

SUMMARY OF TESTIMONY

No oral or written testimony on this proposed rule has been received.

ACTION ITEM

Staff recommends the Board adopt the proposed new rule as presented, to be effective upon filing.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 005 – ADMINISTRATION

OAR 459-005-0180 is added as follows:

459-005-0180

Incapacity of Members, Beneficiaries, and Alternate Payees

(1) Definitions. For purposes of this rule, “incapacitated” and “financially incapable” have the meanings given those terms in ORS 125.005.

(2) Presumption of capacity. Unless demonstrated otherwise in accordance with the requirements of section (3) of this rule, PERS staff shall base its determinations on the presumption that all members, beneficiaries, and alternate payees are not incapacitated or financially incapable of making benefit decisions and executing any documents related to those decisions.

(3) Process for overcoming presumption. If any party in interest challenges a staff determination in accordance with OAR 459-001-0030 through 459-001-0040 based on a claim of incapacity of a member, beneficiary, or alternate payee, PERS will reverse its previous determination only if the party presents an order or determination by a court with appropriate jurisdiction specifically directing PERS to do so, or such other relief as that court may direct.

Stat. Auth: ORS 238.650

Stat. Implemented: ORS 238.005 to 238.715

Hist: Pending Adoption