

## ADMINISTRATIVE REVIEW REGULATIONS

### ADMINISTRATIVE REVIEW REGULATIONS FOR PERF TRUST FUND:

#### **35 IAC 1.2-7-1 Administrative orders; proceedings; reviews**

Authority: IC 5-10.5-4-2

Affected: IC 4-21.5; IC 5-10.2; IC 5-10.3

Sec. 1. All administrative orders, proceedings, and reviews shall be made pursuant to IC 4-21.5. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 1.2-7-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1086; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

#### **35 IAC 1.2-7-2 Pre-trial procedures**

Authority: IC 5-10.5-4-2

Affected: IC 5-10.2; IC 5-10.3

Sec. 2. After any matter has been assigned to an administrative law judge, a prehearing conference may be set by the administrative law judge. The conference shall follow Indiana Trial Rule 16 to the extent applicable. At this time the administrative law judge may encourage any informal proceedings to settle the matter to the extent allowed by law. No person shall be required to make settlement under these informal proceedings. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 1.2-7-2; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1086; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Nov 19, 2010: 20101208-IR-035100722ONA*)

#### **35 IAC 1.2-7-3 Administrative orders; proceedings; reviews**

Authority: IC 5-10.5-4-2

Affected: IC 2-3.5-3-4; IC 4-21.5-3-5; IC 4-21.5-3-28; IC 5-10.2; IC 5-10.3-8-5; IC 33-38-6-23; IC 33-39-7-11

Sec. 3. (a) The purpose of this rule is to establish procedures to process petitioner appeals of PERF staff action, determinations, or decisions referred to as "staff action" in accordance with and pursuant to the Indiana Administrative Orders and Procedures Act (Act), IC 4-21.5-3.

(b) Pursuant to IC 4-21.5-3-28, the executive director (ED) as the board's delegate is the ultimate authority and has set forth the following review process to be followed before a final order is issued:

(1) PERF will issue an initial determination of its response to a questioned action.

(2) The initial determination will be sent by certified mail to the stakeholder with a summary of the member's right to administrative review.

(3) Pursuant to IC 4-21.5-3-5, the petitioner will have fifteen (15) days from receipt of PERF's initial determination to appeal in writing.

(4) Upon receipt by PERF a copy of the appeal will be sent to the administrative law judge (ALJ) assigned to the matter.

(5) The assigned ALJ may set a prehearing conference to discuss issues of discovery and motions for summary judgment and to determine a briefing schedule.

(6) If an evidentiary hearing is required, PERF shall provide space which is equipped with a recording device to conduct the hearing or engage a court reporter to make a record of the hearing if necessary.

(7) Once the ALJ has entered a decision and recommended order, the petitioner will have fifteen (15) days to object to the ALJ's decision.

(8) The ED will make a final determination to affirm, modify, or dissolve the ALJ's order. The executed final order will be mailed by certified mail to the ALJ and petitioner.

(9) The petitioner has thirty (30) days from receipt of the final order to petition a court of jurisdiction for judicial review.

(10) If no petition for judicial review is filed within the thirty (30) day time period, the file is closed.

(11) This rule shall be interpreted to conform to the Act and shall be implemented pursuant to and in accordance with the Act.

(c) This rule will apply to appeals filed pursuant to IC 5-10.3-8-5, IC 33-39-7-11, IC 33-38-6-23, and IC 2-3.5-3-4. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 1.2-7-3; adopted Nov 19, 2010: 20101208-IR-035100722ONA*)

### **35 IAC 1.2-7-4 PERF benefit payments pending appeal**

Authority: IC 5-10.5-4-2

Affected: IC 4-21.5; IC 5-10.2; IC 5-10.3; IC 34-13-1-6

Sec. 4. (a) A member who elects to exercise the right to appeal an initial determination issued by PERF, the prosecuting attorneys' retirement fund, the judges' retirement system, or the legislators' retirement system may receive benefit payments less the disputed amount while the matter is pending. Should the matter be resolved in the member's favor, future benefits will be adjusted accordingly and a lump-sum payment for past benefits due shall be issued within sixty (60) days. If, however, the necessary information has not been provided or was delayed, the sixty (60) day period will be extended accordingly.

(b) Whenever, by final decree or judgment, a sum of money is adjudged to be due to a person, the judgment shall draw an annual rate of interest as described in IC 34-13-1-6. The fund shall not pay prejudgment interest. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 1.2-7-4; adopted Nov 19, 2010: 20101208-IR-035100722ONA*)

## **ADMINISTRATIVE REVIEW REGULATIONS FOR TRF TRUST FUND:**

### **35 IAC 14-2-4 Administrative review and appeals of staff action**

Authority: IC 5-10.5-4-2

Affected: IC 4-21.5-3-5; IC 4-21.5-3-28; IC 5-10.4-2-1; IC 5-10.5

Sec. 4. (a) The purpose of this rule is to establish procedures to process petitioner appeals of TRF staff action, determinations, or decisions referred to as "staff action" in accordance with and pursuant to the Indiana Administrative Orders and Procedures Act (Act), IC 4-21.5-3.

(b) Pursuant to IC 4-21.5-3-28, the executive director (ED) as the board's delegate is the ultimate authority and has set forth the following review process to be followed before a final order is issued:

(1) TRF will issue an initial determination of its response to a questioned action.

(2) The initial determination will be sent by certified mail to the stakeholder with a summary of the member's right to administrative review.

(3) Pursuant to IC 4-21.5-3-5, the petitioner will have fifteen (15) days from receipt of TRF's initial determination to appeal in writing.

(4) Upon receipt by TRF a copy of the appeal will be sent to the administrative law judge (ALJ) assigned to the matter.

(5) The assigned ALJ may set a prehearing conference to discuss issues of discovery and motions for summary judgment and to determine a briefing schedule.

(6) If an evidentiary hearing is required, TRF will provide space which is equipped with a recording device to conduct the hearing or engage a court reporter to make a record of the hearing if necessary.

(7) Once the ALJ has entered a decision and recommended order, the petitioner will have fifteen (15) days to object to the ALJ's decision.

(8) The ED will make a final determination to affirm, modify, or dissolve the ALJ's order. The executed final order will be mailed by certified mail to the ALJ and petitioner.

(9) The petitioner has thirty (30) days from receipt of the final order to petition a court of jurisdiction for judicial review.

(10) If no petition for judicial review is filed within the thirty (30) day time period, the file is closed.

(11) This rule shall be interpreted to conform to the Act and shall be implemented pursuant to and in accordance with the Act.

(*Board of Trustees of the Indiana Public Retirement System; 35 IAC 14-2-4; adopted Dec 16, 2009: 20100106-IR-550090990ONA; errata filed Jan 19, 2010, 12:48 p.m.: 20100203-IR-550100043ACA; adopted Nov 19, 2010: 20101208-IR-550100723ONA*) NOTE: Transferred from the Board of Trustees of the Indiana State Teachers' Retirement Fund (550 IAC 2-2-2.5) to the Board of Trustees of the Indiana Public Retirement System (35 IAC 14-2-4) by P.L.23-2011, SECTION 22, effective July 1, 2011.

### **35 IAC 14-2-5 Benefit payments pending appeal**

Authority: IC 5-10.5-4-2

Affected: IC 5-10.2-4; IC 5-10.4-5-9; IC 34-13-1-6

Sec. 5. (a) A member who elects to exercise the right to appeal an adverse decision issued by TRF may receive benefit payments less the disputed amount while the matter is pending. Should the matter be resolved in the member's favor, future benefits will be adjusted accordingly and a lump-sum payment for past benefits due shall be

issued within sixty (60) days. If, however, the necessary information has not been provided or was delayed, the sixty (60) day period will be extended accordingly.

(b) Whenever, by final decree or judgment, a sum of money is adjudged to be due to a person, the judgment shall draw an annual rate of interest as described in IC 34-13-1-6. The fund shall not pay prejudgment interest. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 14-2-5; filed Oct 5, 1992, 5:00 p.m.: 16 IR 704; readopted filed Dec 3, 2001, 11:02 a.m.: 25 IR 1731; adopted Mar 27, 2007: 20070404-IR-550070200ONA; adopted Dec 16, 2009: 20100106-IR-550090990ONA*) NOTE: Transferred from the Board of Trustees of the Indiana State Teachers' Retirement Fund (550 IAC 2-2-3) to the Board of Trustees of the Indiana Public Retirement System (35 IAC 14-2-5) by P.L.23-2011, SECTION 22, effective July 1, 2011.