

Clearinghouse Rule 00-043

STATE OF WISCONSIN)
) SS
DEPARTMENT OF EMPLOYE TRUST FUNDS)

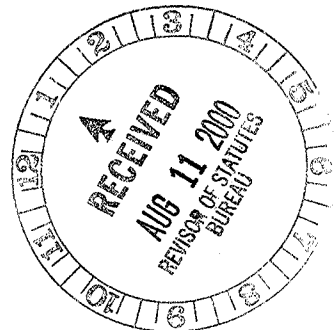
I, Eric O. Stanchfield, Secretary of the Department of Employee Trust Funds and custodian of the official records, certify that the annexed rule, relating to eligible applicants for disability benefits was duly approved and adopted by the State of Wisconsin Group Insurance Board on June 16, 2000, the Teachers and Wisconsin Retirement Boards on June 22, 2000, and the Employee Trust Funds Board on June 23, 2000.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

(no seal)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Employee Trust Funds at 801 West Badger Road in the city of Madison, this 11th day of August 2000.

Eric O. Stanchfield
Eric O. Stanchfield



10-1-00

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYE TRUST FUNDS, EMPLOYE TRUST FUNDS BOARD
TEACHERS RETIREMENT BOARD, WISCONSIN RETIREMENT BOARD, AND
GROUP INSURANCE BOARD**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #00-043

A RULE amending § ETF 50.30 (1m) and ETF 50.50 (1) (c) 3; and creating § ETF 50.32 (4) and ETF 50.42 (8m), Wisconsin Administrative Code, relating to eligible disability applicants.

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Agency Person to be Contacted for Questions

For information about this rule, Diane M. Bass, ICI Contract Monitor, Disability Programs Bureau, Division of Insurance Services, Department of Employee Trust Funds, 801 W. Badger Road, P.O. Box 7931, Madison, Wisconsin 53707-7931. Telephone: (608) 266-8083. FAX: (608) 264-8338.

Statement Explaining Need for Rule

The Department of Employee Trust Funds is required by Wis. Stats. § 227.10 (1) to promulgate as a rule each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute.

The current rules for disability benefits under § 40.63, Stats., and the Long-Term Disability Insurance (LTDI) program rely on a monthly test to determine if the employee was gainfully employed since employment terminated with the WRS covered employer. Amended rules are needed to clarify that the Department will rely on a twelve consecutive month period of time rather than the monthly test to determine whether the employee was gainfully employed and capable of sustaining this level of earnings.

Amended rules are needed to clarify “participating employee” for WRS disability benefits. The rules are needed to clarify the earned income test used to determine whether a terminated employee had intervening employment since the employee last worked for a covered Wisconsin Retirement System (WRS) employer.

Analysis Prepared by the Wisconsin Department of Employee Trust Funds

Authority for Rule: Wis. Stats. § 40.03 (1), (6), (7) and (8)

Statutes Interpreted: Wis. Stats. § 40.03 (6) and 40.63.

Under §40.63, Wis. Stats., to be eligible for a disability benefit from the Wisconsin Retirement System (WRS), an employee, prior to reaching normal retirement age, must be totally disabled by a mental or physical impairment which is likely to be permanent and meet the requirements listed below:

- The employee must be a participating WRS employee.
- The employee must have a total of at least five years of creditable service or at least one-half year of creditable service in each of five of the years. The seven full calendar years before the received date of the disability application will be used to determine whether the service requirement is met.
- The employee must not be entitled to any further earnings from the employer.
- The employer must certify that the employee ceased employment due to a disability.

- The employee must be totally and permanently disabled as certified by two licensed physicians.

Pursuant to § 40.63 (2), Stats., a participant shall be considered a participating employee only if no other employment which is substantial gainful activity has intervened since service for the participating employer terminated and if the termination of active service for the participating employer was due to disability. Wisconsin Statutes, § 40.63 (11), defines “substantial gainful activity” as employment for which the annual compensation exceeds a specified dollar amount for a specific period of time. The current rule, § ETF 50.30 (1m) for disability benefits under § 40.63, Stats., relies on a monthly test to determine if the employee was gainfully employed since employment terminated with the WRS covered employer. The amended rule clarifies that the Department will rely on a twelve consecutive month period of time rather than the monthly test to determine whether the employee was gainfully employed.

The Long-Term Disability Insurance (LTDI) program provides an alternative to § 40.63, Stats., disability benefits. Many of the provisions under § 50.40, Wis. Admin. Code, are very similar to the eligibility provisions for disability benefits under § 40.63, Stats. The current rule (§ 50.50 (1) (c) 3). for disability benefits under the LTDI program, also relies on a monthly test to determine gainful employment. The rule is amended to clarify that the Department will rely on a twelve consecutive month period of time rather than the monthly test to determine whether the employee was gainfully employed.

The rule applies to the disability applicant who applies for either a disability benefit under § 40.63, Stats., or LTDI benefit under § 50.40, Wis. Admin. Code. The LTDI program will eventually replace the WRS disability program under § 40.63, Stats.

Under the provisions of § 40.63, Stats., and LTDI § 50.40, Wis. Admin. Code, to be eligible to apply for either of these benefits, the applicant must be totally disabled by a mental or physical impairment which is likely to be of long-continued and indefinite duration. In addition to meeting the service requirement, the medical definition, and the employer certifying that the applicant ceased employment due to a disability, the applicant must be a participating WRS employee. An employee who has terminated employment with the WRS covered employer shall be considered a participating employee only if no other employment which is substantial gainful activity has intervened since service for the participating employer terminated.

Fiscal Estimate

The Department estimates that there will be no direct fiscal impact from this proposed rule upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education school district or sewerage district.

Final Regulatory Flexibility Analysis

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

(BEGINNING OF RULE TEXT)

SECTION 1. ETF 50.30 (1m) is amended to read:

ETF 50.30 (1m) For purposes of eligibility under s. 40.63 (2), Stats., employment which is substantial gainful activity has intervened if, during any ~~month since~~ twelve (12) consecutive calendar months beginning with the first of the month following the date service for the participating employer terminated, the participant received aggregate earnings, wages, salary and other earned income exceeding ~~one-twelfth~~ of the annual dollar amount determined under s. 40.63 (11), Stats., that is in effect at the end of the 12 consecutive calendar month period.

SECTION 2. ETF 50.32. (4) is created to read:

ETF 50.32 (4) The date on which service for the participating employer terminated, for purposes of s. 40.63 (2), Stats., is the date on which the person last rendered services as defined under sub. (2).

SECTION 3. ETF 50.50 (1) (c) 3. is amended to read:

ETF 50.50 (1) (c) 3. Excluding earnings from the claimant's last participating employer, the claimant has not received aggregate earnings, wages, salary and other earned income in any ~~month since~~ twelve (12) consecutive calendar months beginning with the first of the month following the date the claimant last rendered services to the participating employer exceeding ~~one-twelfth of the earnings limit in effect during the period in question~~ the annual dollar amount

determined under s. ETF 50.32 (3) that is in effect at the end of the 12 consecutive calendar month period.

(END OF RULE TEXT)

Effective Date

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in Wis. Stat. § 227.22 (2).

Explanation of Modifications as Result of Testimony at Public Hearing

No testimony was offered at the public hearing. The only modifications made to the text of the rule were in response to the recommendations of the Legislative Council Staff or minor editorial changes to clarify the analysis of the rule.

List of Persons Appearing or Registering For or Against the Rules

No persons appeared or registered either for or against the rule at the public hearing April 4, 2000. The record was held open for written comments until April 6, 2000, but no comments were received.

Legislative Council Staff Clearinghouse Report on CR #00-043

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

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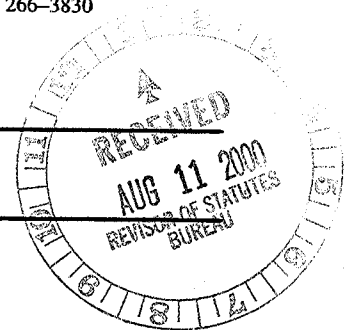


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CLEARINGHOUSE REPORT TO AGENCY



[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-043

AN ORDER to amend ETF 50.30 (1m) and 50.50 (1) (c) 3.; and to create ETF 50.32 (4) and 50.42 (8m), relating to eligible disability applicants.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

02-25-00 RECEIVED BY LEGISLATIVE COUNCIL.

03-16-00 REPORT SENT TO AGENCY.

RS:GAA:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-043

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. ETF 50.30 (1m), "since" should be shown as stricken through and the underscored material should be inserted following "since." The provision would read "... during any ~~month~~ since 12 consecutive calendar months beginning with the first of the month following the date service for the participating employer terminated . . ."

b. The definition of termination of employment in SECTION 2 states that termination of employment "means the last day rendered service as defined under sub. (2)." The definition in s. ETF 50.32 (2) is a description of the term "last rendered services." Therefore, the definition of termination of employment should be rewritten "means the last rendered services as defined under sub. (2)" or "the date on which the person last rendered services as defined under sub. (2)." [See also SECTION 3 of the rule.]

c. In s. ETF 50.50 (1) (c) 3., the notation "ETF" should be inserted after the notation "s."

Response to Legislative Council Staff Recommendations

Most Legislative Council Staff recommendations concerning clarity, grammar, and punctuation were adopted. The text of the rule was modified accordingly. These modifications affected § ETF 50.30 (1m), and ETF 50.50 (1) (c) 3. Under the advice of Department of Employee Trust Funds Counsel, and with respect to Legislative Council staff recommended plain language changes, we removed the definition of termination (§ ETF 50.42 (8m)). This language is not needed with respect to the LTDI benefit. For the WRS disability benefit, we clarified § ETF 50.32 (4) to be consistent with the language of § 40.63 (2), Stats.

Board Authorization for Promulgation

This final draft report on Clearinghouse Rule #00-043 has been duly approved for submission to the Legislature and for promulgation by the Group Insurance Board at its meeting on June 16, 2000, by both the Teachers Retirement and Wisconsin Retirement Boards at their respective meetings on June 22, 2000, and by the Employee Trust Funds Board at its meeting on June 23, 2000.

Respectfully submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS



Eric O. Stanchfield, Secretary
Wisconsin Department of Employee Trust Funds



STATE OF WISCONSIN

Department of Employee Trust Funds

Eric O. Stanchfield
Secretary
801 West Badger Road
P.O. Box 7931
Madison, WI 53707-7931

August 11, 2000

GARY POULSON, DEPUTY REVISOR
REVISOR OF STATUTES BUREAU
131 WEST WILSON STREET, SUITE 800
MADISON WI 53702

Re: Clearinghouse Rule No. 00-043 relating to eligible applicants for disability benefits

Dear Mr. Poulson:

As provided under Wis. Stats. § 227.20 (1) and § 227.21 (1), I am enclosing with this letter a copy of a Certificate and Order creating and adopting rules. A certified copy of this Order has been forwarded to the Secretary of State.

Please publish this rule in the September 30 issue of the *Wisconsin Administrative Register* for an effective date of October 1, 2000. A copy of this Certificate and Order will be sent to you as an e-mail attachment.

Please contact Pam Henning, Director of Legislation and Planning, at 267-2929 if you have any questions regarding the rule.

Sincerely,

Eric O. Stanchfield
Secretary

Enclosure

