

## MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM OF MICHIGAN

### Contested Case/Administrative Hearing Guide

#### General Information

This guide is to inform and assist individuals and entities about the Municipal Employees' Retirement System of Michigan's (MERS) contested case/administrative hearing process. The guide provides a summary of the procedures and law relied upon by MERS to resolve administrative appeals of decisions made by MERS' staff.

If you have any additional questions regarding these procedures, the MERS Legal Department is happy to help, or you may call the MERS Service Center at 800-703-9030. However, please remember that MERS' legal staff is unable to give legal advice to anyone other than MERS and its staff.

This guide is provided for informational use only and does not supersede any statute, administrative rule, or the MERS Plan Document.

#### Are there rules regarding how administrative hearings are conducted?

Yes. MERS' hearings are conducted in accordance with MERS' "Administrative Rules for Contested Case Hearings," a link to which can be found below, that provide specific requirements and rules for the MERS appeals process. We recommend that you read those rules to get a better understanding of MERS' hearing procedures.

#### What is an appeal?

When a claim is granted or denied by MERS, MERS notifies the claimant and the affected employer in writing. If the claimant or the employer thinks that MERS' staff has reached the wrong decision, the claimant or the employer may submit, within 60 days, a written request for an administrative hearing to challenge MERS' decision – this written request is known as an administrative **appeal**. The filing of an appeal with MERS starts a **contested case**.

#### What is an administrative hearing?

An administrative hearing is the formal legal proceeding – similar to a trial – within the contested case process, presided over by an **administrative law judge (ALJ)**, at which a person challenges a claims determination made by MERS' staff, through the presentation of documents, testimony and written argument. After the hearing and presentation of written arguments, or **briefs**, by the parties, the ALJ issues his/her written recommendation (**proposal for decision – PFD**) to the MERS Retirement Board, which will make a final decision.

## What is the role of the ALJ?

It is the ALJ's job to preside over the contested case and administrative hearing, decide on motions and objections raised, receive and review the evidence in the case, make factual and legal determinations, and to make a written recommendation on how the ALJ thinks the matter should be decided to the MERS Retirement Board (the PFD).

## Who are the parties?

There will be at least two "parties" to the case: the **Petitioner** (the claimant or employer appealing MERS' decision) and the **Respondent** (MERS, with whom the Petitioner disagrees about the decision). Upon request, and in accordance with MERS' administrative rules, the ALJ may also allow a person or municipality with an interest in the outcome of the case to join the case to protect their interests – an **Intervenor**. MERS will be represented at the hearing by its attorney. The Petitioner and any Intervenor approved by the ALJ may appear in person, by authorized agent or through their own attorney; however, the cost for any such attorney is the responsibility of the Petitioner or Intervenor.

## What authority governs MERS' administrative hearing process?

The authority that governs MERS' administrative hearing process is as follows:

- Chapter 4 of the Michigan Administrative Procedures Act, Public Act 306 of 1969, MCL 24.271 et seq.  
[http://legislature.mi.gov/\(S\(a2qjtii32kmwhmcg3fj3t1uf\)\)/mileg.aspx?page=getObject&objectName=mcl-306-1969-4](http://legislature.mi.gov/(S(a2qjtii32kmwhmcg3fj3t1uf))/mileg.aspx?page=getObject&objectName=mcl-306-1969-4)
- Section 72 of the MERS Plan Document  
<https://employerportal.mersofmich.com/SharePointFormsService/Default.aspx?Publication=MERSPlanDocument.pdf>
- MERS' Administrative Rules for Contested Case Hearings  
<https://employerportal.mersofmich.com/SharePointFormsService/Default.aspx?Publication=AdmiRulesContestedCaseHearings.pdf>

## What is the order of the contested case process?

- Scheduling the Hearing. Once an appeal is received by MERS, MERS asks the ALJ to schedule a hearing date. A Notice of Hearing (providing the date, time, and place of the hearing, and the issue to be resolved) is then mailed to all parties. All parties must attend the hearing on the date provided in the Notice of Hearing.

**NOTE** – If a party is unable to attend the hearing on the date set out in the Notice of Hearing, the party must write to the ALJ as soon as possible to request a rescheduling of the hearing – an **adjournment**. The ALJ's contact information will be on the Notice of Hearing. Any changes to the hearing date must be approved by the ALJ; such requests are usually only granted for good cause.

- Sharing of Information. Each party has the legal right to know and review what documentary evidence other parties possess and will rely on during the appeal. Prior to the hearing date, MERS will send all parties its proposed **administrative record**, which will be offered at the hearing. The administrative record is a compilation of all documents MERS relied upon in order to make its decision. Any other party wishing to have documents submitted at the hearing must also provide copies to all other parties within the period of time provided in MERS' administrative rules. The ALJ may prohibit a party from relying on documents as evidence in the hearing submitted *after* the deadline. Each party must bring to the hearing a copy of all document evidence the party intends to rely on, as well as additional copies for the ALJ and the other parties (if such copies have not yet been provided). Parties are permitted to object to the admission of evidence submitted by another party.

If a party wishes to call witness to testify at the hearing, the party must timely submit to the ALJ a "**witness list**," identifying everyone who may be called to testify, in accordance with MERS' administrative rules. The ALJ may prohibit a party from calling a witness in the hearing if the witness list is submitted *after* the deadline. Parties may object to the testimony of witnesses called by another party.

- The Hearing. The ALJ will preside over the hearing and will admit evidence, take testimony, hear objections and motions, and establish a briefing schedule for the parties to submit written arguments once all evidence has been presented. The Michigan Rules of Evidence are *generally* adhered to during the hearing; however, the ALJ has discretion to allow evidence of the type commonly relied on by reasonably prudent people, as provided in the Administrative Procedures Act. A court reporter will be present to transcribe all activity at the hearing.
- Proposal for Decision (PFD). The ALJ examines the evidence, the hearing transcript, and written arguments from the parties (briefs), if any, researches the applicable law, and makes an impartial proposed decision through the issuance of a PFD directed to the MERS Retirement Board, and which is mailed to all parties.
- The Retirement Board's Decision. The MERS Retirement Board considers the case, renders a decision and enters a Final Order at a regular Board meeting, which order is then mailed to all parties.

### **Where will the hearing be held?**

All hearings are held at MERS' headquarters located at 1134 Municipal Way, Lansing, Michigan 48820. However, a party can file a motion to participate by telephone; though such motions are only granted if there are extenuating circumstances.

### **What should I bring to the hearing?**

You should bring to the hearing any documents you wish to have admitted into the record as evidence in support of your position, as well as copies for the ALJ and the other parties. You should also bring anyone that you wish to have testify on your behalf at the hearing. However, note that the admission of document evidence and witness testimony are governed by

MERS' administrative rules, which provide specific deadlines for a party to notify the other parties in advance of the hearing of document evidence and witness testimony that the party intends to rely on at the hearing.

### **Do I need an attorney?**

No. Any party in an administrative hearing may be represented by an attorney, or may choose to represent him/herself. MERS does not provide or recommend attorneys to claimants, and a party wishing to have attorney representation must retain the attorney themselves at his/her own expense.

### **What happens at the hearing?**

Administrative hearings are "public hearings," but are generally not attended by anyone other than the parties involved. Petitioners may bring whoever they wish to the hearing, subject to the ALJ's discretion to maintain order.

- The ALJ officially opens the hearing, identifying those in attendance and the dispute at issue. Once the hearing is started, the court reporter will transcribe everything that is said by everyone in attendance until the hearing is concluded. Each party is then allowed to make an opening statement, if they wish.
- The parties offer the proposed documents they wish to be admitted (used) as evidence at the hearing ("**exhibits**"), which are marked by the court reporter. All parties can offer exhibits and can object to material offered by the other side if they believe it should not be used as evidence at the hearing. The ALJ decides whether each proposed document is admitted as an exhibit.
- The Petitioner has the "burden of proof" (which means that s/he has to prove why MERS' decision is wrong) and presents his or her evidence, including testimony, first. Then, MERS presents its responses.
- Sworn testimony can be taken from the Petitioner and/or any other witnesses who may be presented to testify for either side, subject to MERS' administrative rules, which require that a witness list be produced in a specific time period before the hearing. Both parties are given the opportunity to question the witnesses. The ALJ may also question the witnesses.
- The ALJ then establishes a briefing schedule for submitting closing and reply briefs.

### **What happens after the hearing?**

- After the hearing, the parties may submit written closing briefs to the ALJ arguing why the evidence supports their position, and the parties may also file a brief that replies to the arguments made by the other party in their brief.
- After briefing is completed, the ALJ will review the facts, evidence, briefs and applicable law, and issue a PFD, recommending a decision to the Retirement Board; the PFD is provided to all of the parties by mail.
- Included in the PFD is a notification to the parties of their right to file written "**Exceptions**" (objections) to the PFD. Exceptions are each party's opportunity to tell the Retirement Board why they think the PFD that the ALJ has written is wrong. Exceptions must be submitted in writing and sent to the ALJ and all other parties within the established deadline set by the ALJ in accordance with the MERS administrative rules. Exceptions must clearly identify those findings of fact and conclusions of law within the PFD that the party disagrees with, and explain why the ALJ's findings are wrong, relying on specific references to

the record. If Exceptions are filed by one party, the other parties have an opportunity to submit written responses in accordance with MERS' administrative rules.

- After the period for filing Exceptions and responses has ended, the PFD and any written Exceptions and responses, are presented to and reviewed by the Retirement Board. The Board then makes its own independent decision regarding the case in a Final Order, which is mailed to all parties.

### **How do I get a copy of the hearing transcript?**

If you would like a copy of the hearing transcript after the hearing, you must contact the court reporter directly. The court reporter's contact information will be available at the hearing or you may contact MERS' Legal Department for the information.

### **What can I do if I disagree with the Retirement Board's decision?**

If any party to an appeal is dissatisfied with the Retirement Board's decision, that party may appeal the decision to a circuit court. The appeal (referred to as a "**petition for review**" in the Administrative Procedures Act) must be filed within **60 days** of MERS' mailing of the Final Order. There are three possible locations to file a petition for review: in the circuit court for the county where (1) the appealing party lives, (2) where the appealing party has a principal place of business in Michigan, or (3) in the circuit court for Ingham County. The decision on which of these three places to file is made by the party filing the petition for review.

The court will review the Retirement Board's decision along with the entire administrative record, and decide whether the Board's decision was reasonable. The circuit court does *not* retry the case from the beginning – its role is only to determine whether the Board's decision was supported by competent, material and substantial evidence, and in accordance with the law.

### **How long does the contested case/administrative appeal process take?**

From start (receipt of a Petitioner's request to appeal) to finish (the Retirement Board's Final Order), MERS' administrative appeal process generally takes approximately 9 months. Below is an approximate timeline of the process – the process may be longer or shorter, depending on various factors including hearing adjournments, additional medical reviews (for disability retirement appeals), or various stipulations between the parties.

