

Department of Retirement Systems' Disability Review Process

LEOFF 2 Retirement Board
June 16, 2021

Seth Miller,
Retirement Services Assistant Director



Outline

- Overview of LEOFF 2 disability categories
- Catastrophic disability re-review process
- Next steps

LEOFF 2 Disability Overview

- Non-Duty Disability
- Duty Disability
- Catastrophic Duty Disability
- RCW 41.26.470

All levels require that

- 1) a member is no longer able to perform the essential functions of the job and
- 2) separation is due to the disability

Non-Duty Disability

- Cause of disability was not work related
- Benefit calculation formula:
$$2\% \times \text{SCY} \times \text{FAS}$$
- Actuarial early retirement factor if retirement is before age 53
- WAC 415-104-481

Duty Disability

- Cause of disability is work related
- Benefit calculation formula:
$$2\% \times \text{SCY} \times \text{FAS} \text{ or } 10\% \text{ of FAS}$$
- Not reduced for early retirement
- WAC 415-104-479

Catastrophic Duty Disability

- Duty disability is so severe it prevents future substantial gainful activity (currently \$1310 per month)
- 70% of FAS **or** $2\% \times \text{SCY} \times \text{FAS}$ **or**
100% of FAS offset by SSDI and LNI
- Includes reimbursement for medical insurance
- WAC 415-104-480

Catastrophic Duty Disability

- Created in 2010 by SHB at the request of the LEOFF 2 Board
- 56 retirees are receiving this benefit
- 51 separated employment prior to 2018
- Median age is 61
- 16 are under 55 years old
- 20 are 65 years or older

Continuing Disability Review (CDR)

- DRS lacked a standardized process for evaluating whether disability retirees continued to qualify for disability
- Internal and external auditors identified this as a risk to DRS
- The intent of the re-reviews is to determine in the least burdensome way whether a retiree still qualifies for disability

Continuing Disability Review (CDR)

- Modeled on the SSDI re-review process, DRS developed amendments to WAC 415-104-480 (4) in 2020
- Annual review of documents that verify income earnings from the previous year
- Medical review every 3 years until the retiree reaches age 65 or is terminally ill

CDR Notifications

- April 28, 2021 - DRS notified the 34 retirees who were under 65 and not terminally of the continuing disability review (CDR) medical process via letter and provided a copy of the amended WAC
- May 12, 2021 - DRS notified 13 retirees that their CDR would take place this year and included a form that their primary medical provider could complete and return to DRS
- Early June - DRS notified retirees via letter that the CDR process was on hold and provided more detail on the development of the WAC amendment

Next Steps

- DRS will work with the LEOFF 2 Board staff and any other interested stakeholders to review and amend the CDR WAC as needed
- DRS will notify the catastrophic disability retiree population of the CDR process in early 2022

Questions?





STATE OF WASHINGTON

DEPARTMENT OF RETIREMENT SYSTEMS

P.O. Box 48380 • Olympia, WA 98504-8380 • 360.664.7000 • Toll Free 800.547.6657 • www.drs.wa.gov

June 8, 2021

MEMBER NAME
STREET ADDRESS
CITY, STATE ZIP

RE: Review of your Catastrophic Disability

Dear MEMBER NAME,

MEMBER ID: XXXXXX

This letter is to notify you that the Department of Retirement Systems (DRS) re-evaluates income and medical eligibility for catastrophic duty disability benefits until you turn 65. You will be notified via US mail when your review is being conducted, and we will ask you to gather medical and financial information for us.

1. Medical Eligibility (Continuing Disability Review, or CDR): In accordance with WAC 415-104-480 (enclosed), DRS will periodically conduct a Continuing Disability Review (CDR) of your catastrophic duty disability to assess your continuing eligibility for this benefit.

CDR is an assessment of your current medical condition to determine if it continues to be catastrophically disabling. DRS medical professional(s) will review your recent medical documentation, with an additional file assessment by external medical experts as needed.

DRS will conduct a CDR at least once every three years until you reach age 65 and may increase the frequency of your CDRs if your condition is expected to improve. DRS reserves the right to require a CDR at any time at its discretion if there is reason to believe that your condition has improved. DRS may also waive the CDR if your disability is determined to be terminal.

2. Income Eligibility: At least annually, you must submit documentation to verify that your income from earnings is below the defined income threshold. Defined income threshold means any substantial gainful activity that produces average earnings in excess of the Federal Social Security disability standards, adjusted annually for inflation. For further information, see <https://www.ssa.gov/OACT/COLA/sga.html>. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

The documentation verifying your income must include a signed copy of your filed tax return showing income from all sources for the prior year. You must also notify the department within thirty (30) calendar days of any changes in your income that would impact your eligibility, including, but not limited to, wages and earnings from self-employment.

Please note, if you do not provide the medical information when requested for an evaluation of your catastrophic disability or the annual financial information, your disability status may be discontinued or converted to a different status.

If you have any questions or need further assistance, you may contact us at 800-547-6657 or by email at drs.drt@drs.wa.gov.

Sincerely,

Your Disability Retirement Team

Washington State Department of Retirement Systems
360.664.7966 | 800.547.6657, ext. 47966 | Fax: 360.664.7675 | www.drs.wa.gov

WAC 415-104-480

Does my disability qualify me for a LEOFF Plan 2 catastrophic duty disability benefit?

(1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:

- (a) The disability or disabilities that qualified you for a LEOFF Plan 2 duty disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and
- (b) Your disability or disabilities have lasted or are expected to last at least twelve months, or are expected to result in your death.

(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.

Examples:

- Totally disabled, but not from duty injury – Not eligible for catastrophic disability benefit.

A LEOFF Plan 2 member suffers a knee injury on duty, leaving the member disabled from LEOFF employment. The knee injury, by itself, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a duty disability, but not for a catastrophic disability because the fully disabling condition, ALS, is not duty related.

- Totally disabled, duty injury totally disabling – Eligible for catastrophic disability benefits.

A LEOFF Plan 2 member suffers a knee injury while fishing. The knee injury, by itself, is neither duty related nor catastrophically disabling. The member also suffers severe burns while fighting a fire, leaving the member fully disabled. The Social Security Administration grants the member a full disability based on the member's total condition. The member qualifies for a LEOFF plan 2 catastrophic disability benefit because the burn injuries, by themselves, render the member totally disabled.

(3) Medical insurance premium reimbursement is an additional benefit for a member who is catastrophically disabled in the line of duty (RCW [41.26.470](#)). However, if you choose to withdraw one hundred fifty percent of your accumulated contributions pursuant to RCW [41.26.470](#)(6) you are not entitled to the medical insurance premium reimbursement.

(4) If you receive catastrophic duty disability benefits, the department will periodically review your continued eligibility. If it is determined that you are no longer eligible, or if you fail to provide required documentation or cooperate with the review, your catastrophic duty disability benefit may be discontinued or converted to a different retirement status.

(a) Income review: At least annually, you must submit documentation to verify that your income from earnings is below the defined income threshold as defined in subsection (5)(c) of

this section. The documentation must include a signed copy of your filed tax return showing income from all sources for the prior year. You must also notify the department within thirty calendar days of any changes in your income that could impact your eligibility including, but not limited to, wages and earnings from self-employment. (See subsection (5)(c), (d) and (f) of this section.)

(b) **Medical review:** The department will conduct a continuing disability review (CDR) at least once every three years until you reach age sixty-five. The department may increase the frequency of your CDRs if your condition is expected to improve, and reserves the right to require a CDR at any time at its discretion. The department may also waive the CDR if your disability is determined to be terminal.

(5) **Definitions.** As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW [41.26.470](#)(9).

(b) **Continuing disability review (CDR)** means an assessment of your current medical condition to determine if it continues to be catastrophically disabling. The department's medical professional will review recent documentation, with supplemental assessment by external medical experts at the department's discretion.

(c) **Defined income threshold** means any substantial gainful activity that produces average earnings, as defined in (d) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(d) **Earnings** are any income or wages received, which are reportable as wages or self-employment income to the IRS.

(e) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

(f) **Substantial gainful activity** describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful, and it may be, but is not required to be, from work or self-employment. Earnings as defined in this section includes compensated work activity that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work activity may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your LEOFF position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

(g) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.



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June 8, 2021

MEMBER NAME
STREET ADDRESS
CITY, STATE ZIP

MEMBER ID: XXXXXX

Re: Your catastrophic duty disability review

Dear MEMBER NAME:

The Department of Retirement Systems (DRS) is reviewing your eligibility for ongoing catastrophic duty disability benefits. We regularly assess the medical condition of those who are receiving a catastrophic duty disability. Our continuing disability review (CDR) is done to determine if your current medical conditions still make you eligible. We may also require a review if there is a reason to believe your condition has improved.

How the continuing disability review works

We assess your medical condition at least once every three years until you are 65; however, we may increase how often we do your CDRs if your condition is expected to improve. Our medical professional will review your recent documents which may also include the assessments of external medical experts. If your disability is determined to be terminal during our review, we may cancel the CDR.

What we need from you

At least annually, you must submit documents to us that prove your income from earnings is below a certain amount. Any earnings you make will count if they are over the federal Social Security disability standards, adjusted for inflation. Your wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

The documents verifying your income must include a signed copy of your filed tax return showing income from all sources for the past year. You must also notify us within 30 calendar days of any changes in your income that would impact your eligibility, including wages, earnings from self-employment and any other sources.

Read the back of this letter for more information and the list of documents and actions we will need from you to complete the CDR. Please be sure to return all documents to avoid any delays or interruption in your benefits.

If we find you are no longer eligible, or you don't send us the documents we require, we may change your catastrophic duty disability benefit to a standard line-of-duty disability benefit or we may stop all your benefits.

If you have any questions or need further assistance, contact us at 800-547-6657 or drs.drt@drs.wa.gov.

Sincerely,

Your Disability Retirement Team



Please complete and return these documents:

- ☐ LEOFF Plan 2 Application for Catastrophic Disability Allowance.
- ☐ Medical documents supporting the nature and extent of your disability. Some examples include progress notes, office visit notes, consultations, and independent medical reports. **Your documents must be dated:**

We received your application, however:

- ☐ Your signature is not notarized.
- ☐ Your application is incomplete.
- ☐ Other, specified below:

Important: If you don't send us the financial or medical documents we require, or your medical documents show that you have recovered substantially or that you engaged in substantial gainful activity, we may change your catastrophic duty disability benefit to a standard line-of-duty disability benefit or we may stop all your benefits.



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