



## MEETING NO: 15-12 BENEFIT REVIEW COMMITTEE

The Regular Meeting of the Benefit Review Committee of the Board of Trustees was held Thursday, December 17, 2015. Present at the meeting were Committee members Copper, Kuehne, Miller, Piechocinski, Stanish, and Thompson, IMRF staff members, Davis, Dixon, Rockett, and Janicki-Clark.

### (15-12-01)(Visual roll call)

Mr. Piechocinski presided as chairperson and called the meeting to order at 11:00 a.m.

### (15-12-02)(Approval of prior meeting minutes)

The Benefits Manger presented the minutes from the Committee meeting held on November 19, 2015.

**After discussion, Mr. Kuehne moved to approve the minutes. Seconded by Ms. Thompson.**

Motion passed by unanimous voice vote

### (15-11-03)(Village of Northbrook- AP Exemption denial)

The Committee considered the following findings and conclusions of the IMRF hearing officer:

On March 5, 2015, the Illinois Municipal Retirement Fund ("IMRF") invoiced the Village of Northbrook ("Northbrook") for an Accelerated Payment ("AP") assessment in the amount of \$5,802.06, regarding wages that were paid to James R. Schwall from March 2014 through February 2015. **Board Exhibits, page 4.** The IMRF issued the AP Assessment pursuant to Section 7-172(k) of the Illinois Pension Code. [40 ILCS 5/7-172(k)]. On March 11, 2015, Northbrook timely filed a Request for a Review of the AP invoice. **Board Exhibits, pages 5-7.**

On April 10, 2015, IMRF staff issued an Administrative Staff Determination denying Northbrook's Request for Review. **Board Exhibits, page 3.** Subsequently, Northbrook timely appealed the Staff Determination. **Board Exhibits, page 2.**

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on December 8, 2015, before Michael B. Weinstein, the duly designated IMRF Hearing Officer. Copies of all documentation submitted as evidence at this hearing were received into evidence as **Board Exhibits, pages 1-19.**

The Village of Northbrook was given proper notice of the hearing. Jeffrey Rowitz, Northbrook's Finance Director, appeared on behalf of Northbrook and explained the factual basis for the appeal. Also present at the hearing, in addition to the Hearing Officer and Mr. Rowitz, were Beth Janicki Clark, Associate General

Counsel for IMRF; Larice Davis, IMRF paralegal; Iwona Petryszak, Northbrook's Accounting Manager; and Mary Kebler, an employee in the Northbrook Accounting Department.

As a result of this hearing, the Board of Trustees of IMRF finds and determines as follows:

## **I. EVIDENCE AND TESTIMONY**

### **Review of Written Documentation and Mr. Rowitz's and Ms. Clark's Presentations**

1. Northbrook was invoiced the amount of \$5,802.06, representing an AP assessment, with respect to the wages that were paid to James R. Schwall from March 2014 through February 2015. **Board Exhibits, page 4.**

2. Northbrook appealed the invoice, asserting that Mr. Schwall's earnings were exempt from an AP assessment since the earnings increase resulted from "an increase in the number of hours required to be worked." **Board Exhibits, pages 5-6.** Specifically, Northbrook noted that Mr. Schwall, "had limited time available to use benefit time, resulting in payout of vacation time at retirement." **Board Exhibits, page 7.**

3. Northbrook recognizes that its position does not actually fit within the asserted exemption; however, it believes that the intent of the AP statute is to prevent "pension spiking" and that the facts of its particular situation do not include a "pension spiking" attempt. **Presentation by Mr. Rowitz.**

4. Northbrook asserts that the legislative intent of the statute should provide an exemption where, as herein, the additional payment represents accrued vacation time that was paid after an involuntary termination of employment. **Presentation by Mr. Rowitz.**

5. Northbrook proposes that the Board of Trustees of IMRF adopt a policy that would provide for an AP exemption in such circumstances. **Presentation by Mr. Rowitz.**

6. IMRF staff submits that the plain meaning of the statute must be followed, and where the legislature failed to provide for an exemption that would include Northbrook's situation, the Board of Trustees must uphold the Administrative Staff Determination. **Presentation by Ms. Janicki Clark.**

## **II. FINDINGS OF FACT**

1. The Village of Northbrook, Illinois is an IMRF employer and, as such, is subject to the provisions of Section 7-172(k) of the Illinois Pension Code. [40 ILCS 5/7-172(k)].

2. The undisputed evidence shows that the Illinois General Assembly, in enacting Section 7-172(k), did not provide an exemption that would cover the Northbrook situation.

## **III. CONCLUSIONS OF LAW**

3. The Board of Trustees of IMRF has jurisdiction over Northbrook's appeal pursuant to Sections 7-172(k), 7-198 and 7-200 of the Illinois Pension Code (40 ILCS 7-172(k), 7-198 and 7-200), as well as under the Non-Disability Appeal Procedures that have been adopted by the Board.

4. **Illinois courts have, on many occasions, noted that the most fundamental rule of statutory construction is to give effect to the legislative intent and that the language of a statute is the best indication of the legislature's intent.** E.g., *Murray v. Chicago Youth Center*, 224 Ill.2d 213, 235, 309 Ill.Dec. 310, 864 N.E.2d 176 (2007).

5. Furthermore, a statute's language must be given its plain and ordinary meaning, and courts [as well as administrative agencies, such as IMRF] are not free to construe a statute in a manner that changes that meaning. *Id.*

6. Therefore, if the statutory language is clear and unambiguous, courts [and administrative agencies, such as IMRF] must give effect to that plain and ordinary meaning, without resorting to other canons or aids of statutory interpretation. *Id.*

7. Section 7-172(k) of the Illinois Pension Code does not provide for an exemption to the AP requirement that would include the facts of Northbrook's appeal.

8. The IMRF Board of Trustees does not have the authority to adopt an additional exemption to the AP requirement that is not included within Section 7-172(k).

9. In considering the totality of the evidence and resolving any conflicts therein, the Board hereby finds that Northbrook has not met its burden of proving that it is entitled to an exemption to the AP requirements as provided in Section 7-172(k) of the Illinois Pension Code.

#### IV. DECISION

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, IT IS HEREBY ORDERED by the Board of Trustees of the Illinois Municipal Retirement Fund, in regard to the Accelerated Payment appeal of the Village of Northbrook, Illinois, as follows:

The administrative staff determination denying Northbrook's appeal is hereby affirmed, and Northbrook must pay the Accelerated Payment invoice of \$5,802.06, plus any applicable interest, within three (3) years after receipt of said invoice.

This is a final administrative decision which is reviewable under the terms of the Illinois Administrative Review Law. (40 ILCS 5/7-220).

**After further discussion, the Committee recommends that the Board adopt the findings and conclusions of the hearing officer.**

Motion: Stanish

Second: Copper

Ayes: Copper, Kuehne, Miller, Piechocinski, Stanish and Thompson

Nays:

Motion Passed: 6-0

Dr. Miller joined the meeting

(15-12-04)(Total and Permanent Disability Denial – Kathleen Lemburg – Rock Island County # 3058)

Kathleen Lemburg, her witness Kevin Casey and appeared before the Committee in person. Her witness Kelly Casey Dreher appeared via teleconference on December 17, 2015. The Committee heard comments from Ms. Lemburg, her witnesses, the Medical Consultant and staff regarding her conditions. Finally, the Committee reviewed the written materials that were submitted to the Committee by staff.

**After further discussion the committee recommends that the Board overturn staff's determination to deny total and permanent disability benefits.**

**Motion:** Kuehne

**Second:** Copper

**Ayes:** Copper, Kuehne, Piechocinski, Miller, Stanish and Thompson

**Nays:**

**Motion Passed:** 6-0

Dr. Rao joined the meeting

(15-12-05)(Temporary Disability Termination – Cheryl A. DeClerck – Glencoe Park District # 3298)

Cheryl De Clerck and her witness, Sherri Tonozzi appeared before the Committee via teleconference. The Committee heard comments from Ms. DeClerck and Ms. Tonozzi regarding her conditions. The Committee heard comments from the Medical Consultants and staff. Finally, the Committee reviewed the written materials that were submitted to the Committee by staff.

**After further discussion the committee recommends that the Board uphold staff's determination to terminate temporary disability benefits.**

**Motion:** Kuehne

**Second:** Stanish

**Ayes:** Copper, Stanish, Kuehne, Miller, Piechocinski and Thompson

**Nays:**

**Abstain:**

**Motion Passed:** 6-0

Dr. Miller left the meeting

(15-12-06)(Total and Permanent Disability Termination – Pamela Burlington- Grundy Kendall R.O.E. # 5382)

Pamela M. Burlington appeared before the Committee via teleconference. The Committee heard comments from Ms. Burlington, the Medical Consultant and staff regarding her conditions. Finally, the Committee reviewed the written materials that were submitted to the Committee by staff.

**After further discussion the committee recommends that the Board uphold staff's determination to terminate total and permanent disability benefits. The committee determined that since Ms. Burlington's condition has improved, she can now drive, climb stairs and walk, compared to when she was originally approved for total and permanent disability, she therefore no longer meets IMRF definition of total and permanent disability.**

**Motion:** Kuehne

**Second:** Miller

**Ayes:** Copper, Kuehne, Piechocinski, Miller, Stanish and Thompson

**Nays:**

Motion Passed: 6-0

(15-12-07)(Gainful Activity)

The Committee considered a proposed resolution defining “gainful activity” for purposes of a determination of total and permanent disability. The Committee made recommendation and requested that the revised resolution be presented at the January BRC committee meeting.


(15-12-08)(Public Comments)

There were no public comments made.


(15-12-09)(Adjournment)

Ms. Copper made a motion to adjourn at 2:58 p.m. Seconded by Ms. Thompson. Motion passed by unanimous voice vote

**The next regular scheduled meeting of the Committee will be at 11:00 a.m. on Thursday January 21, 2016.**

  
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Chairperson

2/25/16  
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Date

  
\_\_\_\_\_  
Clerk

2-25-16  
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Date

**2015-12 Board Minutes**