
WELSH STATUTORY INSTRUMENTS

2015 No. 622

The Firefighters' Pension Scheme (Wales) Regulations 2015

PART 12

Determinations and appeals

CHAPTER 2

Appeals to Board of Medical Referees

Appeals against determinations based on medical evidence

164.—(1) A member (P) who wishes to appeal against a scheme manager's determination on an issue of a medical nature may do so to a board of medical referees in accordance with the provisions of regulations 165 (notice of appeal) to 172 (notices etc).

(2) Subject to paragraph (3), where a determination is—

- (a) made with regard to an opinion obtained under regulation 162(2) (role of IQMP in determinations by the scheme manager) or medical evidence relied on as mentioned in regulation 162(7); or
- (b) reconsidered under regulation 163(4) (review of medical opinion) with regard to a response under paragraph (2) of that regulation,

the scheme manager must, within 14 days of making, confirming or revising the determination (as the case may be), send to P the documents mentioned in paragraph (4).

(3) Nothing in paragraph (2) requires the supply of documents that have already been supplied under regulation 162(8) or 163(5).

(4) The documents are—

- (a) a copy of the opinion, response or evidence (as the case may be);
- (b) an explanation of the procedure for appeals under this Chapter; and
- (c) a statement that if P wishes to appeal against the scheme manager's determination on an issue of a medical nature, P must give written notice to the scheme manager, stating P's name and address and the grounds of appeal, not later than 28 days after P receives the last of the documents required to be supplied under this paragraph, or within such longer period as the scheme manager may allow.

Notice of appeal

165.—(1) Subject to paragraph (2), written notice of appeal against a determination on an issue of a medical nature stating—

- (a) the appellant (P)'s name and address; and
- (b) the grounds of the appeal,

must be given to the scheme manager within 28 days of the date on which P receives the documents referred to in regulation 164(4) (appeals against determinations based on medical evidence); and where P receives those documents on different dates, they are to be treated for this purpose as received on the later or latest of those dates.

(2) Where—

- (a) notice of appeal is not given within the period specified in paragraph (1); but
- (b) the scheme manager is of the opinion that P's failure to give it within that period was not due to P's own default,

the scheme manager may extend the period for giving notice for such length, not exceeding six months from the date mentioned in paragraph (1), as the scheme manager considers appropriate.

Reference of appeal to the board

166.—(1) On receiving a notice of appeal, the scheme manager must supply the Welsh Ministers with three copies of—

- (a) the notice of appeal;
- (b) the notice of the relevant determination;
- (c) the opinion, response or evidence (as the case may be) supplied to the appellant (P); and
- (d) every other document in its possession or under its control which appears to it to be relevant to the issue that is the subject of the appeal.

(2) The Welsh Ministers must refer an appeal to a board of medical referees ("the board").

(3) The board is to consist of not less than three medical practitioners appointed by, or in accordance with arrangements made by, the Welsh Ministers.

(4) One member of the board must be a specialist in a medical condition relevant to the appeal.

(5) One member of the board must be appointed as chairman.

(6) Where there is an equality of votes among the members of the board, the chairman is to have a second or casting vote.

(7) As soon as reasonably practicable after referring an appeal to the board, the Welsh Ministers must supply the board's administrator with three copies of every document supplied under paragraph (1).

(8) The board must arrange for one of their number to review those documents ('the reviewing member').

(9) As soon as reasonably practicable after concluding the review, the reviewing member must give written notice to the Welsh Ministers—

- (a) of any other information which the reviewing member considers would be desirable so as to provide the board with sufficient information for the purpose of enabling the board to determine the appeal; and
- (b) if it is the case, that it is the reviewing member's opinion that the board may regard the appeal as frivolous, vexatious or manifestly ill-founded.

(10) On receipt of the reviewing member's notice the Welsh Ministers must—

- (a) where the reviewing member has notified the Welsh Ministers of the desirability of obtaining other information, require the scheme manager to use its best endeavours to obtain that information; and
- (b) where the notice contains an opinion of the description mentioned in paragraph (9)(b), send a copy of it to the scheme manager.

(11) A scheme manager which receives a copy of a reviewing member's opinion must, as soon as reasonably practicable—

- (a) send a copy of it to P; and
- (b) by written notice to P—
 - (i) advise P that if P's appeal is unsuccessful, P may be required to pay the scheme manager's costs, and
 - (ii) require P to notify it within 14 days of the date of the notice whether P intends to pursue or withdraw the appeal.

(12) A scheme manager which notifies P under paragraph (11)(b) must inform the Welsh Ministers of P's response to the notice under sub-paragraph 11(b); and the Welsh Ministers must notify the board accordingly.

Procedure where appeal to be pursued

167.—(1) Where an appeal is to be pursued, the board must secure that the appellant (P) and the scheme manager (“the parties”) have been informed—

- (a) that the appeal is to be determined by the board; and
- (b) of an address to which communications relating to the appeal may be delivered to the board.

(2) Subject to paragraph (5), the board—

- (a) must interview and medically examine P at least once; and
- (b) may interview or medically examine P or cause P to be interviewed or medically examined on such further occasions as the board thinks necessary for the purpose of determining the appeal.

(3) The board must appoint, and give the parties not less than two months' notice of, the time and place for every interview and medical examination; and if the board is satisfied that P is unable to travel, the place must be P's place of residence.

(4) P must attend at the time and place appointed for any interview and medical examination by the board or any member of the board or any person appointed by the board for that purpose.

(5) If—

- (a) P fails to comply with paragraph (4); and
- (b) the board is not satisfied that there was a reasonable cause for the failure,

the board may dispense with the interview and medical examination and may determine the appeal on such information as is then available.

(6) Any interview under this regulation may be attended by persons appointed for the purpose by the scheme manager or by P or by each of them.

(7) Where either party intends to submit written evidence or a written statement at an interview held under paragraph (2), the party must, subject to paragraph (8), submit the evidence or statement to the board and to the other party not less than 28 days before the date appointed for the interview.

(8) Where any written evidence or statement has been submitted under paragraph (7) less than 28 days before the date appointed for the interview, any written evidence or statement in response may be submitted by the other party to the board and the party submitting the first-mentioned evidence or statement at any time up to, and including, that date.

(9) Where any written evidence or statement is submitted in contravention of paragraph (7), the board may postpone the date appointed for the interview and require the party who submitted the

evidence or statement to pay such reasonable costs of the board and of the other party as arise from the postponement.

The board's report

168.—(1) The board must supply the Welsh Ministers with—

- (a) a written report of its decision on the relevant medical issues; and
- (b) if the board is of the opinion that the appeal was frivolous, vexatious or manifestly ill-founded, a statement to that effect (which may form part of the report).

(2) The Welsh Ministers must supply the parties with a copy of the report and of any separate statement under paragraph (1)(b).

Reconsideration by the board

169.—(1) Where—

- (a) the parties have received a copy of the report supplied under regulation 168 (the board's report), and
- (b) the parties agree that the board has made an error of fact which materially affects the board's decision,

the scheme manager must within 28 days of receipt of the report, supply the Welsh Ministers with two copies of a statement agreed between the parties.

(2) The agreed statement must set out—

- (i) the error of fact,
- (ii) the correct fact, and

invite the board to reconsider its decision.

(3) The Welsh Ministers must within 14 days of receipt of the statement supply a copy of it to the board.

(4) As soon as reasonably practicable after receiving the statement, the board must reconsider its decision.

(5) Within 14 days of that reconsideration the board must—

- (a) give written notice to the Welsh Ministers that it has confirmed its decision or revised its decision (as the case may be); and
- (b) if it has revised its decision, supply the Welsh Ministers with a written report of its revised decision.

(6) The Welsh Ministers must supply to the parties a copy of the written notice confirming the board's decision or a copy of the written report of the board's revised decision (as the case may be).

Fees and allowances payable to the board

170.—(1) There must be paid to the board and the reviewing member—

- (a) such fees and allowances (including those payable to the reviewing member for work undertaken on the review of documents under regulation 166(8) (reference of appeal to the board)) as are determined in accordance with arrangements made by the Welsh Ministers; or
- (b) where no such arrangements have been made, such fees and allowances as the Welsh Ministers may from time to time determine.

(2) The fees and allowances payable under paragraph (1) must—

- (a) be paid by the scheme manager; and
- (b) be treated for the purposes of regulation 171 (expenses of each party) as part of the scheme manager's expenses.

Expenses of each party

171.—(1) Subject to regulation 167(9) (procedure where appeal to be pursued) and paragraphs (2) to (5) below, the expenses of each party to the appeal must be borne by that party.

(2) Where the board—

- (a) determines an appeal in favour of the scheme manager; and
- (b) states that, in its opinion, the appeal was frivolous, vexatious or manifestly ill-founded,

the scheme manager may require the appellant (P) to pay it such sum, not exceeding the total amount of the fees and allowances payable to the board and the reviewing member under regulation 170(1) (fees and allowances payable to the board), as the scheme manager considers appropriate.

(3) Where—

(a) P gives notice to the board—

- (i) withdrawing the appeal, or
- (ii) requesting cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination under regulation 167(3), and

the notice is given less than 22 working days before the date appointed under regulation 167(3); or

(b) P's acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed under regulation 167(3) less than 22 working days before the date appointed,

the scheme manager may require P to pay it such sum, not exceeding the total amount of the fees and allowances payable to the board under regulation 170(1) (fees and allowances payable to the board), as the scheme manager considers appropriate.

(4) Where the board—

- (a) determines an appeal in favour of P; and
- (b) does not otherwise direct,

the scheme manager must refund to P the amount specified in paragraph (5).

(5) The amount is the total of—

- (a) any personal expenses actually and reasonably incurred by P in respect of any interview under regulation 167(2); and
- (b) if any such interview was attended by a qualified medical practitioner appointed by P, any fees and expenses reasonably paid by P in respect of such attendance.

(6) For the purposes of paragraphs (2) and (4), any question arising as to whether the board's determination is in favour of the scheme manager or of P is to be decided by the board or, in default, by the Welsh Ministers.

Notices etc.

172. Any notice, information or document which an appellant (P) is entitled to receive for any purpose of regulations 164 (appeals against determinations based on medical evidence) to 171 (expenses of each party) is, unless the contrary is proved, to be treated as having been received by P if it was posted in a letter addressed to P at P's last known place of residence.