
STATUTORY INSTRUMENTS

2008 No. 653

The National Health Service Pension Scheme Regulations 2008

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.D

MEMBERS' RETIREMENT BENEFITS

Entitlement to pensions

2.D.10 Early retirement on ill-health (deferred members)

(1) A deferred member who has not reached the age of 65 is entitled to immediate payment of a pension that is payable for life if—

- (a) in the opinion of the Secretary of State the member suffers from physical or mental infirmity as a result of which the member is incapable of engaging in regular employment of like duration, and
- (b) the member has claimed the pension.

(2) A deferred member who is in NHS employment and has not reached the age of 65 is entitled to immediate payment of a pension that is payable for life if—

- (a) in the opinion of the Secretary of State the member—
 - (i) does not fall within paragraph (1)(a), but
 - (ii) suffers from physical or mental impairment as a result of which the member is permanently incapable of discharging the duties of the member's employment efficiently, and
- (b) the member has left that employment and claimed the pension.

(3) The amount of the annual pension payable under this regulation (disregarding any additional pension) is calculated as specified in regulation 2.D.1(4).

(4) For the purposes of determining whether a member is permanently incapable of discharging the duties of the member's employment efficiently under paragraph (2)(a)(ii), the Secretary of State shall have regard to the factors in paragraph (6) (no one of which shall be decisive) and disregard the member's personal preference for or against engaging in that employment.

(5) For the purposes of determining whether a member is permanently incapable of engaging in regular employment of like duration under paragraph (1)(a), the Secretary of State shall have regard to the factors in paragraph (7) (no one of which shall be decisive) and disregard the factors in paragraph (8).

(6) The factors to be taken into account for paragraph (4) are—

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;

- (b) the member's—
 - (i) mental capacity; and
 - (ii) physical capacity;
 - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his incapacity, irrespective of whether such rehabilitation is undergone; and
 - (d) any other matter which the Secretary of State considers appropriate.
- (7) The factors to be taken into account for paragraph (5) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and
 - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
 - (i) mental capacity;
 - (ii) physical capacity;
 - (iii) previous training; and
 - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
 - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his incapacity (irrespective of whether such rehabilitation is undergone) having due regard to the member's—
 - (i) mental capacity; and
 - (ii) physical capacity;
 - (d) such type and period of training which it would be reasonable for the member to undergo in respect of his incapacity (irrespective of whether such training is undergone) having due regard to the member's—
 - (i) mental capacity;
 - (ii) physical capacity;
 - (iii) previous training; and
 - (iv) previous practical, professional and vocational experience;
 - (e) any other matter which the Secretary of State considers appropriate.
- (8) The factors to be disregarded for paragraph (5) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
 - (b) the geographical location of the member.
- (9) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Secretary of State considers—
- (a) that it would be reasonable for the member to refuse,
 - (b) would provide no benefit to restoring the member's capacity for—
 - (i) discharging the duties of the member's employment efficiently under paragraph (2)(a)(ii), or
 - (ii) engaging in regular employment of like duration under paragraph (1)(a),

before the member reaches age 65, or

- (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches age 65;

“permanently” means the period until age 65; and

“regular employment of like duration” means—

- (a) in the case of a member who was a non-GP provider, such employment as the Secretary of State considers would involve a similar level of engagement to the member’s pensionable service as a non-GP provider immediately before that service ceased; and
- (b) in all other cases, where prior to leaving employment that was pensionable the member was employed—
 - (i) on a whole-time basis, regular employment on a whole-time basis;
 - (ii) on a part-time basis, regular employment on a part-time basis,regard being had to the number of hours, half-days and sessions the member worked in that employment.