

**LICENSING AND REGULATORY AFFAIRS**  
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
**STATE EMPLOYEES' RETIREMENT BOARD**

(By authority conferred on the executive director of the Michigan administrative hearing system by section 2 of 1943 PA 240, MCL 38.2, and Executive Reorganization Order Nos. 2005-1 and 2011-4, MCL 445.2021 and 445.2030)

**R 38.1 Rescinded.**

History: 1944 ACS 37; 1954 AC; 1979 AC; 2008 AACS.

**R 38.2 Rescinded.**

History: 1944 ACS 37; 1954 AC; 1979 AC; 2008 AACS.

**R 38.3 Rescinded.**

History: 1944 ACS 37; 1954 AC; 1979 AC; 2008 AACS.

**R 38.4 Rescinded.**

History: 1944 ACS 37; 1954 AC; 1979 AC; 2008 AACS.

**R 38.5 Rescinded.**

History: 1944 ACS 37; 1954 AC; 1979 AC; 2008 AACS.

**R 38.6 Rescinded.**

History: 1944 ACS 37; 1954 AC; 1979 AC; 2008 AACS.

**R 38.7 Rescinded.**

History: 1944 ACS 37; 1954 AC; 1979 AC; 2008 AACS.

**R 38.8 Rescinded.**

History: 1944 ACS 37; 1954 AC; 1979 AC; 2008 AACS.

**R 38.11 Rescinded.**

History: 1954 ACS 77, Eff. Nov. 30, 1973; 1979 AC; 2008 AACS.

**R 38.12 Rescinded.**

History: 1954 ACS 77, Eff. Nov. 30, 1973; 1979 AC; 2008 AACS.

**PART I. DEFINITIONS - APPLICABILITY**

**R 38.21 Definitions.**

Rule 21. (1) As used in these rules:

(a) "Act" means 1943 PA 240, MCL 38.1.

(b) "Administrative record" means the application and related documents considered by the staff of the retirement system in reaching its determination.

(c) "APA" means 1969 PA 306, MCL 24.201.

(d) "Application" means a request for a benefit provided by the act.

"Application" also includes a request to reopen a closed application and a reapplication.

(e) "Board" means the retirement board as defined in MCL 38.1h(4) of the act and composed of those members set forth in MCL 38.3 of the act.

(f) "Bona fide termination of employment" for purposes of R 38.38 means that a member terminated employment in good faith, with honesty, and without any intent to return to a position covered by the act within the same month as the individual's retirement allowance effective date.

(g) "Closed application" means a request by an individual for a benefit provided by the act that was withdrawn by the individual or otherwise never decided by the retirement system or the board.

(h) "Dependent" or "dependents," as used in MCL 38.20d of the act means all of the following:

(1) The retirant's spouse.

(2) Any unmarried child of the retirant who is considered a dependent under section 152 of the internal revenue code.

(i) "Good cause," as used in MCL 38.21 and 38.24 of the act, means the legitimate inability to file an application within 1 year after termination of the member's employment. "Good cause" does not include a person's own careless neglect or inattention to the filing requirements.

(j) "Medical advisor," as used in MCL 38.21 and 38.24 of the act, means a physician designated by the retirement system.

(k) "Permanent," as used in MCL 38.21 and 38.24 of the act, means will last throughout the lifetime of the member.

(l) "Presiding officer" means presiding officer as defined in MCL 24.279 and 24.280 of the APA.

(m) "Reasonable medical treatment" means medical treatment that does not involve significant danger to life or extraordinary suffering and that has a reasonable probability of significantly improving the condition caused by the disease or injury.

(n) "Reapplication" means a request by an individual for a benefit provided by the act that was previously decided by the staff of the retirement system or the board.

(o) "Totally incapacitated," as used in MCL 38.21 and 38.24 of the act, means the member is unable to perform the duties of his or her current position, or any other position reasonably related to the member's education, training, or experience.

(2) Terms defined in the act and the APA have the same meaning when used in these rules.

History: 2008 AACS.

Editor's Note: An obvious error in R 38.21 (f) was corrected at the request of the promulgating agency, pursuant to Section 56 of 1969 PA 306, as amended by 2000 PA 262, MCL 24.256. The rule containing the error was published in Michigan Register, 2008 MR 8. The memorandum requesting the correction was published in Michigan Register, 2008 MR 11.

### **R. 38.22 Rescinded.**

History: 2008 AACS; 2015 AACS.

### **R 38.23 Rescinded.**

History: 2008 AACS; 2015 AACS.

## **PART II. PROCEDURAL RULES**

### **R 38.24 Rescinded.**

History: 2008 AACS; 2015 AACS.

### **R 38.25 Rescinded.**

History: 2008 AACS; 2015 AACS.

**R 38.26 Action by the board.**

Rule 26. The board shall act on every proposal for decision in a public meeting. The board may do any of the following:

- (a) Remand the matter to the presiding officer or other presiding officer for further action.
- (b) Issue a final decision approving, rejecting, or modifying the proposal for decision.
- (c) Exercise any other power of the board.

History: 2008 AACS.

**R 38.27 Clerical mistakes; correction.**

Rule 27. Clerical mistakes and errors arising from omissions or commissions made by the board may be corrected by the board at any time on its own initiative or as a result of a motion filed by a party.

History: 2008 AACS.

**R 38.28 Rescinded.**

History: 2008 AACS; 2015 AACS.

**R 38.29 Refiling an application.**

Rule 29. (1) Except as provided in subrule (3) of this rule, if an individual files an application that concerns a matter that has already been considered and denied by the staff of the retirement system and a timely request for hearing was not made, then the application shall not be considered and the individual shall be notified accordingly.

(2) Except as provided in subrule (4) of this rule, if an individual files an application that concerns a matter that has already been considered and denied by the board, the application shall not be considered and the individual shall be notified accordingly.

(3) If an individual's previous application for a disability retirement, as provided for in MCL 38.21 and 38.24 of the act, is denied by the staff of the retirement system and the individual did not make a timely request for hearing, then the individual may file a reapplication only if the individual did not terminate his or her employment in a position covered by the act and either worked after the denial and before the reapplication or was off work with the approval of his or her employer.

(4) If an individual's previous application for a disability retirement, as provided for in MCL 38.21 and 38.24 of the act, is denied by the board, then the individual may only file a reapplication if the individual did not terminate his or her employment in a position covered by the act and either worked after the denial and before the reapplication or was off work with the approval of his or her employer.

History: 2008 AACS.

**R 38.30 Documentary evidence.**

Rule 30. If the staff of the retirement system denies an application, and the applicant timely requests a hearing, then the staff of the retirement system shall provide a copy of its administrative record and notification to the applicant. The applicant shall have 30 days to file any additional documents that he or she wants the staff of the retirement system to consider.

History: 2008 AACCS.

**R 38.31 Notarized signatures.**

Rule 31. The board shall determine whether a signature shall be notarized on a form used by the retirement system. A notarized signature is presumed to represent the signature of the individual whose name it purports to be.

History: 2008 AACCS.

**PART III. RETIREMENT/PENSION RULES**

**R 38.32 Medical advisor's opinion.**

Rule 32. The opinion of an individual's treating physician shall not be given more weight than the opinion of the medical advisor with regard to an application for a disability retirement under MCL 38.21 and 38.24 of the act solely based on the relative length of time these physicians have spent examining an individual or because the medical advisor's review was based on an examination of the individual's medical records.

History: 2008 AACCS.

**R 38.33 Reasonable medical treatment.**

Rule 33. An individual shall pursue all reasonable medical treatment for the injury or disease that is the basis for his or her application for duty or non-duty disability as provided by MCL 38.21 and 38.24 of the act.

History: 2008 AACCS.

**R 38.34 Duty disability.**

Rule 34. An application for duty disability filed under MCL 38.21 of the act shall be denied if the personal injury or disease that is the basis for the application was any of the following:

- (a) A personal injury or illness, which existed before becoming a member.

(b) The aggravation of a personal injury or illness, which existed before becoming a member.

(c) A personal injury or illness, which arose while the applicant was a member but was not proximately caused by the member's employment.

History: 2008 AACCS.

### **R 38.35 Medical examination.**

Rule 35. (1) For purposes of deciding eligibility for disability retirement under MCL 38.21 and 38.24 of the act, a medical examination conducted by 1 or more medical advisors means either a personal medical examination of the member or a review of the application and medical records of the member.

(2) If an applicant for a disability retirement under MCL 38.21 or MCL 38.24 of the act fails to submit to a reasonable medical examination requested by the system, the application shall be denied.

History: 2008 AACCS.

### **R 38.36 Other decisions not binding.**

Rule 36. The board is not bound by a determination of disability issued by any other state or federal agency or private entity when the board is determining whether a member is entitled to a disability retirement provided by MCL 38.21 or 38.24 of the act.

History: 2008 AACCS.

### **R 38.37 Disability application.**

Rule 37. (1) An individual who seeks a duty or non-duty disability retirement allowance, as provided in MCL 38.21 and 38.24 of the act, shall do both of the following:

(a) File an application on a form provided by the retirement system, including the names and addresses of all the applicant's health care providers and the date of treatment.

(b) Execute all necessary authorizations to disclose health information which permits the retirement system, or its agents, to obtain and review all health information that relates in any way to the basis for the claimed disability. The health information shall include what was created before, contemporaneously with, and subsequent to the date of the alleged injury or disease that is related to the medical condition.

(2) An individual shall not amend an application for duty or non-duty disability retirement filed under MCL 38.21 or 38.24 of the act after the expiration of the 30-day period in R 38.30, unless the individual demonstrates that the reason for wanting to amend the application was not known before the expiration of the 30-day period.

History: 2008 AACCS.

**R 38.38 Suspension of retirement allowance.**

Rule 38. The retirement allowance of a retirant shall be suspended during any time period that the retirant returns to work in a position covered by the act unless the retirement allowance resulted from a bona fide termination of employment.

History: 2008 AACCS.

**R 38.39 Disability retirement.**

Rule 39. (1) To receive a disability retirement under MCL 38.21 of the act, the member shall prove by a preponderance of the evidence that on or before the termination of his or her employment, he or she was totally incapacitated and that such incapacity was probably permanent.

(2) To receive a disability retirement under MCL 38.24 of the act, the member shall prove by a preponderance of the evidence that on or before the termination of his or her employment, he or she was totally incapacitated and that such incapacity was likely to be permanent.

(3) For purposes of MCL 38.21 and 38.24 of the act, the board shall not retire a member if the member can perform any job for which the member has experience, training, or education. If the board determines that a member is not mentally or physically totally incapacitated for further performance of duty or that a member's total incapacity is not probably permanent, the retirement system does not have the obligation to find employment for a member.

History: 2008 AACCS.

**R 38.40 Social security estimate.**

Rule 40. If a member elects the equated payment under MCL 38.20(2) of the act, the estimated social security primary insurance amount shall be based on an estimate of the age 65 social security benefit obtained by the member from the social security administration and provided by the member to the staff of the retirement system. This social security estimate shall be used to actuarially adjust the retirement allowance to provide an increased retirement allowance payable up to age 65 irrespective of when the retirant begins to draw social security. The retirement allowance shall be reduced at age 65 by the social security estimate amount the retired member provided at the time of retirement.

History: 2008 AACCS.

**R 38.41 Survivor benefit; equated pension.**

Rule 41. For purposes of this rule, the equated pension, as described in MCL 38.20(2) of the act, refers to the benefit before and after the retirant's attainment of age 65. If a member elects a survivor option, as provided in MCL 38.31(1) of the act, the member's retirement allowance shall be adjusted accordingly. If the member also

elects to receive such a retirement allowance as an equated payment under MCL 38.20(2) of the act, then the resulting retirement allowance shall be paid until the retirant's death. Upon the retirant's death, the retirement allowance shall be adjusted to cancel the effect of electing the equated payment.

History: 2008 AACCS.

**R 38.42 Service credit toward retirement.**

Rule 42. (1) Under MCL 38.1i(1) of the act all of the following shall apply:

(a) Years of service are credited in accordance with the state fiscal year.

(b) The maximum service credited on the payroll end date of any state biweekly pay period is 80 hours.

(c) The maximum service credited in a fiscal year is 1.0000 which is equivalent to 2,080 hours.

(d) A maximum of 26 biweekly pay periods of 80 hours shall be credited in a fiscal year. Proportionate service credit shall be awarded for payrolls reported on a frequency other than a biweekly pay period. A part-time employee earns service credit in proportion to the hours worked within that pay period.

(e) Only regular hours are counted for service credit and overtime hours shall not count towards creditable service.

(2) An employee whose position is designated full time under legislative council operations administrative rules and determined to be full time by the staff of the retirement system, but whose full time schedule totals less than 80 hours per biweekly pay period, shall be credited with .0385 years for each full pay period of work.

History: 2008 AACCS.

**R 38.43 Layoff; eligibility for purchase of buy-in credit; refund repay; resuming tax deferred payment (TDP) agreement.**

Rule 43. For up to 1 calendar year after the effective date of a layoff, the individual laid off may purchase buy-in credit, repay a refund and, if returned to work, resume TDP payments on an existing agreement. If a layoff extends beyond a 1-year period, then the laid-off individual ceases to be eligible to purchase buy-in credit, repay a refund or, if returned to work, resume TDP payments on an existing agreement, unless the member demonstrates a continued employer-employee relationship as determined by the staff of the retirement system.

History: 2008 AACCS.

**R 38.44 Ten-year service requirement.**

Rule 44. (1) An applicant for a disability allowance provided in MCL 38.24 of the act shall meet the 10-year requirement only under either of the following conditions:

(a) If the applicant has 10 years or more of service credit in a position covered by the act.

(b) If the applicant has 10 years or more of service credit when the applicant's service credit as an employee in a position covered by the act is combined with the service credit received under MCL 38.17, 17a, 17b, 17c, 17d, 17l or 17n of the act.

(2) An applicant for a disability allowance provided in MCL 38.24 of the act shall not be allowed to use either of the following:

(a) The provisions of the reciprocal retirement act, 1961 PA 88, MCL 38.1101, to meet the 10-year requirement set forth in MCL 38.24.

(b) Service credit purchased by the applicant under MCL 38.17g, 17h, 17i, 17m or 18(2) of the act to meet the 10-year requirement in MCL 38.24.

History: 2008 AACS.

#### **R 38.45 Eligible domestic relations order.**

Rule 45. (1) An eligible domestic relations order issued under the eligible domestic relations order act, MCL 38.1701, shall be drafted in conformity with applicable law and a true or certified copy filed with the staff of the retirement system before the effective date of the member's retirement.

(2) If the staff of the retirement system rejects an eligible domestic relations order as not in conformity with the applicable law, then a true or certified copy of an amended eligible domestic relations order that conforms with applicable law shall be filed with the staff of the retirement system

before the effective date of the member's retirement.

History: 2008 AACS.

#### **R 38.46 Domestic relations order.**

Rule 46. (1) A domestic relations order, as defined in MCL 38.1702(c), shall be drafted in conformity with applicable law and filed with the staff of the retirement system before the member's death.

(2) If the staff of the retirement system rejects a domestic relations order as not in conformity with the applicable law, then a true or certified copy of an amended domestic relations order that conforms with applicable law shall be filed with the staff of the retirement system before the member's death.

History: 2008 AACS.

#### **R 38.47 Duty; non-duty.**

Rule 47. If a member requests a duty disability and the member has more than 10 years of credited service, then the staff of the retirement system shall review the application to determine if the member qualifies for either a duty or non-duty disability retirement allowance. If the staff of the retirement system denies the application for a duty disability, but recommends approval of the application for non-duty

disability, then the board shall not consider the application for non-duty disability until after the expiration of the 60-day notice provided in R 38.24(1).

History: 2008 AACCS.

**R 38.48 Payment of retirement allowance.**

Rule 48. A retirement allowance provided for in MCL 38.19, 19a, 19b, 19c and 19d of the act shall not be paid for any period of time before the date that the application is filed with the board.

History: 2008 AACCS.

**R 38.49 Retirement allowance; overpayment.**

Rule 49. (1) If the retirement system pays a retirant or beneficiary more in a retirement allowance than he or she is entitled to receive, the retirement system shall do both of the following:

(a) Pursuant to MCL 38.41, immediately correct the error, notify the retirant or beneficiary of the correction of the error and provide the retirant or beneficiary with his or her correct retirement allowance.

(b) Not recover any overpayment to a retirant or beneficiary for those payments which the retirant or beneficiary received more than 6 years prior to the date of the notification to the retirant or beneficiary of the error by the retirement system except in each of the following situations when the retirement system shall recover the full amount of the overpayment:

(i) If the member, retirant, or beneficiary misrepresented the information provided to the retirement system and the retirement system calculated the retirement allowance based upon that incorrect information.

(ii) If the member, retirant, or beneficiary knew or should have known of the error and did not notify the retirement system of the error so that the retirement system could correct it.

(iii) If the annual retirement allowance which the retirant or beneficiary received was greater than the retirant's final average compensation.

(2) The retirement system shall recover the entire amount of the overpayment received by the retirant or beneficiary in the situations set forth in subrule (1)(b)(i), (ii) and (iii) of this rule by adjusting future payments to the retirant or beneficiary in such a manner that the actuarial equivalent of the correct benefit is paid. For purposes of determining the actuarial equivalent retirement allowance, the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

(3) Except as provided in subrule (1)(b) of this rule, depending upon which is most beneficial to the retirant or beneficiary, the retirement system shall recover the overpayment received by the retirant or beneficiary during the 6 years prior to the date of the notification of the error by doing either of the following:

(a) Allowing the retirant or beneficiary to repay the overpayment in 1 lump sum.

(b) Reducing the retirant's or beneficiary's correct monthly retirement allowance by 1 of the following:

(i) The same percentage as results from the amount of the highest monthly overpayment divided by the comparable actual monthly payment until the amount of the overpayment is recovered.

(ii) To the actuarial equivalent of the benefit calculated pursuant to MCL 38.41. For purposes of determining the actuarial equivalent, the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

History: 2008 AACCS.

### **R 38.50 Retirement allowance; underpayment.**

Rule 50. (1) If the retirement system pays a retirant or beneficiary less in a retirement allowance than he or she is entitled to receive, then the retirement system shall do both of the following:

(a) Pursuant to MCL 38.41, immediately correct the error, notify the retirant or beneficiary of the correction of the error and provide the retirant or beneficiary with his or her correct retirement allowance.

(b) At the election of the retirant or beneficiary, pay the underpayment in a lump sum or the actuarial equivalent.

(2) For purposes of determining the actuarial equivalent, the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

History: 2008 AACCS.

## **PART IV. DECLARATORY RULING**

### **R 38.51 Declaratory ruling.**

Rule 51. (1) Any interested person may request a declaratory ruling from the board as provided by MCL 24.263 of the APA.

(2) A request for declaratory ruling shall consist of all of the following:

(a) Be in the form of a sworn statement.

(b) State the nature and purpose for the request.

(c) Contain a clear and concise statement of the actual state of facts upon which the ruling is requested.

(d) State the statute, rule, or order administered by the board that applies.

(e) Contain a statement establishing the relationship between the person requesting the ruling and the statute, rule, or order that applies.

(f) Contain the requested proposed ruling.

(3) An interested person who requests a declaratory ruling shall serve a copy of it upon every person referred to in the statement of facts included in the request.

(4) Within 90 days of receipt of a request for declaratory ruling that complies with this rule, the board shall respond to the request by doing 1 of the following:

(a) Issue the declaratory ruling.

(b) Deny the request for declaratory ruling.

(c) Extend the time for doing either subdivision (a) or (b) of this subrule by an additional 90 days.

History: 2008 AACCS.