

Claims Integrity Process Metropolitan Government of Nashville and Davidson County

FINAL REPORT

Project Scope and Objectives

At the request of the Internal Audit Section of the Finance Department of the Metropolitan Government of Nashville and Davidson County a review was conducted of the disability pension plan and also an investigation on selected disability pensioners (Project).

The Project was conducted in part as a follow-up to the Internal Audit Section's Report on the Metropolitan Employee Benefit Board (Board) dated December 31, 2000 and issued January 16, 2001.

The Project process was based on established research methodologies, meticulous review standards, and proven investigative techniques, including but not limited to public record document review and surveillance. The Claims Review Process utilized Kroll's proprietary protocol that was applied to the pool of disability recipients. This protocol identifies those disability recipients who are at the highest risk of defrauding the disability pension system, and those pensioners were selected for further review, evaluation, and analysis. This review process utilized only full-time employees of Kroll.

The Project also included a review of the Metropolitan Charter and Code sections (Plan) pertaining to disability pensions and included an examination of the pool of Metro Disability Pensioners.

The objectives of the Project included: (1) identification of plan provisions which may contribute to continuation of disability benefit payments beyond the period of actual functional disability (2) validation of the continued eligibility of selected Metro disability pensioners (3) examination of specific cases identified as high risk of abuse for potential of being disqualified for disability benefits under the Plan.

Background and Procedures

Kroll's legal team reviewed the Metropolitan Government of Nashville and Davidson County's Pension Plan documents including the Charter and Code to understand the parameters of the Plan as it related to Metro employees.

As of January 1, 2002, 1140 individuals were collecting disability pensions, but Metro's selection criteria narrowed the field for review to 448 pensioners. The selection criteria utilized required the pensioner to be:

- Less than 56 years old and,
- On disability for less than 40 years and more than six months with time remaining on disability of at least 4 years and,
- Not currently collecting Social Security disability benefits



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Metro's objective in establishing the above criteria was to include a broad but manageable group for this review. The criteria recognized that those over age 56 had a relatively short time left to receive disability benefits and that those on a disability pension less than six months would likely not have had time to complete the application process for Social Security benefits or complete an annual disability questionnaire cycle. Pensioners collecting Social Security benefits are very likely to actually be disabled given Social Security's strict definition of disability.

The 448 pensioner files identified as fitting the selection criteria were reviewed. As a result of numerous file reviews, several files with circumstances considered indicative of poor plan design or other weaknesses based on understanding of the documentation were identified. Recommendations have been made that would correct those problems. Twenty-one (21) pensioners were identified who, based on the plan and evidence discovered, should be disqualified from receiving disability benefits.

Because the file selection protocol focuses only on cases with high risk of abusing the system, often cases of other pensioners who are abusing the system do not come under review. For example, it is likely that many non-public safety pensioners who are denied Social Security benefits would not be disabled under Metro's definition of disability and those files should be further reviewed by Metro.

Because the Project focused on identifying and dealing with potential problems, this report necessarily contains critical comments about the disability pension system and some disability pensioners. It is therefore necessary to remind readers that many disability pensioners are deserving of the benefits they receive.

The report has been organized to include three major sections. The first two sections include findings and recommendations of a general nature resulting from our review of the Plan and the 448 files. The first section includes findings and recommendations regarding administration and application of the Plan. The second section includes findings and recommendations related to Plan design. The final section documents results specific to the twenty-one pensioners with evidence they should be disqualified from receiving pension benefits. In that section, the cost savings associated with discontinuing these individuals from disability pension benefits has been identified. The savings have been classified into one or more categories based upon the major factor contributing to the individual continuing to collect a pension benefit. Most of these individuals' circumstances include more than one contributing factor and that is noted on the attached Schedule A.

Findings and Recommendations (General)

Administration and Application of the Plan

FINDINGS

During the file review portion of the Project, deficiencies were identified concerning the security of the files.

- There is little or no physical security of the files; the records were not protected in any way against fire, flood or other damage, and there is no back up copy of the files.
- There was no evidence of a consistent or uniform chain of custody process or file documentation process, and there was no workable library system for checking the files in and out of the file room.

It was determined that the Metro Plan pertaining to disability pension qualification and benefits is not being applied properly or consistently, and that the Plan is not being administered as effectively and efficiently as it should be.

- A disability must be incurred while in the line of duty, unless the employee has ten years of credited service. Disabilities which occur while an employee is not in the line of duty or are pre-existing are not covered by the plan. Although this is basic to the plan, examples were encountered of this policy not being adhered to, resulting in disability benefits being paid to individuals who do not qualify based on these rules.
- Annual disability reports/questionnaires are required to be filed by each Pensioner providing documentation and/or answers to several key questions including: (1) proof that the Pensioner is still disabled, (2) documentation that Social Security benefits have been applied for and denied or granted, (3) amount of any Social Security benefit received, (4) amount of outside earnings. Annual reports submitted by the Pensioner are perhaps the Pension Board's best resource in identifying fraud or the Pensioner's ability to return to work. The Plan does not give the Board the authority to waive the submission of annual reports/questionnaire by the pensioners. Although a complete review of a pensioners' file is distinguishable from the required annual report, it is logical that the submission of the report supposes that it will be reviewed in the context of other information in the file. The past lack of filing, review or oversight of the annual report process is central to the problems that Metro is now experiencing with disability pensions.
- The Pension Board has engaged in the practice of waiving annual medical reviews for some individual pensioners for a period of up to five years. By waiving medical review and consideration of a file for periods up to five years, the Board is greatly reducing its ability to determine if a pensioner continues to be disabled. Additionally, there are no discernable criteria used in determining which files are selected for waiver for extended periods of time.

- The Plan provides that “no person shall knowingly and willfully make any false statement or shall falsify or permit to be falsified any records of the system, in any attempt to defraud the system in any manner.” “The Metropolitan Government shall have the right to bring appropriate legal proceedings, both civil and criminal, against such person....” Until recently, the Board does not appear to have utilized this provision aggressively to pursue potential fraudulent statements or actions by a disability pensioner.
- The Board is not taking any discernable definitive action steps aimed at returning people to work. Metro departments are not always offering employment to pensioners who have been released to return to work. Sometimes the return to work release includes restrictions which the department cannot or will not accommodate; at other times it is not clear why the department will not return the pensioner to work.
- The Plan specifies that once an individual is medically able to resume working, the department where he/she last worked will be notified and if the department fails to return the person to work within sixty days, the cost of all continuing disability payments will be allocated to the former department on a quarterly basis. The Board is not enforcing this requirement.
- Pensioners often ask a question relating to how much they can make before their benefits are reduced. This should raise a flag with staff members reviewing the files since the question presupposes that the individual is capable of working.

RECOMMENDATIONS

The following recommendations address the weaknesses noted above:

- Develop and maintain a file inventory system to include a chain of custody and track the current physical location of all individual files and implement a comprehensive records protection system.
- Immediately create a back up of the records utilizing electronic archive technology or an image reduction/duplication program. Then develop, implement and test a Disaster Recovery Plan for the disability file system.
- Consider outsourcing the file management function.
- When an employee requests a disability (ILOD or medical) pension, they should be required to provide Metro with authorization for the IRS to provide information about and/or copies of tax returns and for the Social Security Administration to provide details of reported earnings to Metro.

- The annual questionnaire should be revised to make information requests clear and include a requirement for the pensioner to provide copies of business or personal tax returns including copies of all W2's or 1099's. All questionnaires should be reviewed timely and questionable or unusual responses should be investigated.
- Failure to complete and return a questionnaire or incomplete questionnaires with information left blank or "estimated" amounts of outside earnings should be unacceptable. The Plan should be administered to mandate that if questionnaires are not received or are incomplete, the pensioner shall have his/her benefits suspended pending investigation.
- Implement a system which will encourage pensioners to return to work. Establish a liaison between the Board and various Metro departments to actively manage the process of returning a Pensioner to work, whether in his/her original department or another.
- The Board should enforce the provision of the Plan requiring departments that do not reinstate pensioners cleared to work to pay the cost of the pension after sixty days. This will incentivize these departments to find jobs for the pensioners.
- If the Medical Review Board determines that a pensioner is permanently disabled using the Metro definitions, and has no chance of improvement in medical condition, that pensioner's file should not require an annual review for a number of years. All other files should be reviewed at least annually and, if necessary, additional personnel should be hired to assist with the review. The savings that would be realized from the cessation of improper pensions would exceed the cost of the additional personnel.
- Utilize the subpoena power vested in the Board to investigate all potential fraud or misrepresentation by a disability pensioner.
- The Board should utilize its ability to require disability questionnaires on a more frequent basis than annually in cases where fraud is suspected. The Plan allows the Board to require reports as often as monthly. There should be adequate staff to thoroughly review the reports and follow up with questions or recommendations to management and the Board.
- When a pensioner requests information about how much he/she can make before disability benefits are reduced, they should be encouraged to return to work and make as much as possible, thereby reducing pension costs. The question should not be answered in a manner that supports pensioners in their goal of earning as much as possible without affecting his/her pension payment.

Plan Design

FINDINGS

Several aspects of the Plan design and existing Plan language, many of which were identified during this work and are addressed in this report, make it very difficult to discontinue pension benefits.

- In the case of Police and Fire pensioners the benefits are designed to stop only upon the satisfaction of five specific conditions. The Board must find that the pensioner is able to resume active work, in the same department and in the same or substantially the same job in which he/she worked. The department must offer the pensioner a job with the same rate of pay and the pensioner must actually return to work.
- The Police Department administratively requires officers to pass a psychological evaluation, polygraph test, and background check and satisfactorily complete a training update before being allowed to return to work. The Department also requires anyone returning to work to physically qualify to return to the Patrol Division, effectively blocking return to work with any physical restrictions.
- Implicit in these requirements is the stipulation that the Pensioner must be offered a job and refuse to return to work before any consideration can be given to discontinuing the pension benefits. This allows a pensioner who is no longer disabled to remain on a pension simply because the department does not offer him/her a job.
- No disability pensioner, regardless of department, can have pension benefits discontinued unless he/she is offered and refuses employment **three times**.
- The definition of disability is inconsistent with the criteria for discontinuing disability pension benefits. For departments other than Police and Fire, the definition of disability for the first two years of disability is “unable to perform the duties of any occupation in the Metropolitan Government” for which he/she is qualified. After two years, the definition of disability becomes “incapable of engaging in any business or occupation or to perform any work for compensation.” Based on this review, it appears that a large number of the individuals receiving a disability pension may, by the above definitions, no longer be disabled.
- The plan does not allow the Board to terminate pension benefits because a pensioner is shown to have violated his/her medical restrictions. Even when it can be established that a pensioner is doing the same or equivalent job somewhere other than Metro, the pension benefit cannot be terminated.

RECOMMENDATIONS

The following are recommendations for Metro to consider to address the weakness noted.

- Immediately establish and use a Medical Review Board to make final medical decisions to be approved by the Benefit Board, utilizing contract medical specialists if considered necessary.
- Establish a procedure for appeal of any decision of the Board administrative staff, the Board or Medical Review Board only through an independent Administrative Law Judge.
- Consider changing the Police and Fire Departments' return to work limitations/restrictions to allow return to work in any job in the department or in Metro, with appropriate salary subsidy if necessary.
- Revise the Plan to require returning Police Department disability pensioners to pass a psychological evaluation, polygraph test, and background investigation, meet the physical requirements of the Patrol Division and satisfactorily complete a training update to return to a sworn position. If the pensioner does not pass meet any of these requirements due to circumstances beyond his/her control, they should then be returned to work in any position they are qualified for, with a salary supplement if necessary. If the pensioner does not meet any of the requirements due to his/her own actions, their pension benefits should be discontinued.
- If a pensioner is denied Social Security disability benefits, the Medical Review Board should review whether that pensioner is disabled by the Metro definitions. If he/she does not meet the Metro disability definitions, they should be returned to work and/or the pension benefits discontinued.
- Eliminate the requirement that a pensioner be offered and turn down three jobs before discontinuing pension benefits. When a pensioner is cleared to return to work and is offered and declines one job, pension benefits should be discontinued. Additionally, Metro should establish a requirement that the pensioner make a good faith effort at reemployment. This would minimize the potential to sabotage reemployment efforts by someone who does not want to work. Recognizing that the pensioner should not have to suffer a pay cut because of the necessity of returning to a different position, implement a pay subsidy program for all departments.
- Change the language allowing the elimination of rent received from the definition of outside earnings. Rents from property owned before the date of disability should continue to be excluded from the definition of outside earnings. Rents from properties acquired after the date of disability should be included in the definition of outside income.
- The Medical Review Board should certify whether pensioners can perform specific duties or activities due to medical/physical restrictions or limitations. If pensioners are found to be performing activities or duties outside of restrictions, pension benefits should be terminated.



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- Consider taking action that would not allow disability pensioners to start his/her own business, without regard to type (sole proprietor, partnership, corporation), after being awarded a disability pension. Include a prohibition against pensioners working in a business started and owned by the pensioner's spouse in the restriction. The ability to own, operate or work in a business should mean that the pensioner does not meet the most restrictive Metro definition of disabled.

In addition, Metro should consider revamping the entire disability pension system and opting into the Worker's Compensation system. The administration of the Worker's Compensation program could be performed by a third party under a self-funded arrangement or it could be a fully insured program through an insurance company. In either case, the entire system would be managed outside the Metro government.

**RESULTS FROM INVESTIGATION OF TWENTY-ONE
PENSIONERS WITH EVIDENCE SUPPORTING BENEFIT DISQUALIFICATION**

The Claims Integrity Process resulted in concluding that twenty-one (21) pensioners should be disqualified from receiving benefits under the Plan.

Although most of the reviews resulted in evidence of contributing factors from more than one source, a primary contributing factor (“P”) and other contributing factors (“C”) have been identified in the table below. The primary contributing factors are defined as: eight (8) Board administration or application of the Plan, eight (8) Pensioners providing misleading or erroneous information, four (4) Plan design and one (1) Department not returning pensioner to work.

	Date of Disability	Time Remaining to Service Pension @ 6/1/02	Plan	Dept	Pensioner	Benefit Board	Cost of time remaining until Service Pension
Pensioner A	07/25/1995	17 Years 6 Mos	P		C	C	\$371,639
Pensioner B	04/07/1989	15 Years 1 Mos		C	C	P	\$312,527
Pensioner C	10/01/2000	15 Years 2 Mos			P		\$302,592
Pensioner D	11/23/1996	14 Years 8 Mos				P	\$444,124
Pensioner E	06/28/1997	20 Years 2 Mos			P	C	\$355,781
Pensioner F	07/01/2000	12 Years 8 Mos			P	C	\$319,528
Pensioner G	02/26/1993	19 Years	C	C	C	P	\$375,782
Pensioner H	12/14/1996	22 Years 7 Mos		C	C	P	\$386,723
Pensioner I	11/25/1984	17 Years 4 Mos			P	C	\$189,738
Pensioner J	11/21/1992	12 Years 9 Mos		C		P	\$235,217
Pensioner K	09/01/1992	12 Years 10 Mos	P	C	C	C	\$231,020
Pensioner L	10/22/1997	28 Years 4 Mos	P		C	C	\$505,664
Pensioner M	03/01/1991	13 Years 3 Mos		C		P	\$292,901
Pensioner N	12/06/1985	14 Years			P	C	\$172,737
Pensioner O	09/01/1992	19 Years 4 Mos			C	P	\$510,272
Pensioner P	09/01/1992	14 Years 1 Mo	P	C	C	C	\$277,065
Pensioner Q	05/26/1995	14 Years 5 Mos		P		C	\$291,280
Pensioner R	07/09/1994	10 Years 5 Mos			P	C	\$204,443
Pensioner S	09/09/2000	27 Years 1 Mo			P	C	\$551,278
Pensioner T	10/29/1994	19 Years		C		P	\$554,173
Pensioner U	01/04/1996	25 Years 5 Mos			P	C	\$403,319
Cost by Primary Contributor			\$1,385,388	\$291,280	\$2,499,416	\$3,111,719	
Grand Total Cost							\$7,287,803

Schedule A is attached containing additional information about each of the pensioners including comments about claim inconsistencies, reason for possible benefit termination and comments about classification factors (Plan, Department, Pensioner, Board) for each file.

Immediate action is recommended in each of these cases, including further investigation, which is necessary in some of the cases. Additional investigation will provide support for the recommendation of pension benefit discontinuation and it should be initiated without delay to minimize the continuing costs to taxpayers.

In two cases the pensioner has taken action or refused to take action that results in the pensioner being disqualified from returning to Metro employment. Pensioner "T" was cleared to return to work in 1990, however, he/she has refused to renew his/her EMT license, a requirement for him/her to return to his/her former position. His/her pension benefits should be terminated immediately. Pensioner "U" was cleared to return to work with restrictions in 1997. He/she has committed a felony, which is cause for termination of employment while on disability pension and his/her benefits should be terminated immediately.

In all cases in which the pensioner has contributed to his/her continuing to receive pension benefits when not qualified, action should be taken to recover the fraudulently received benefits.

All cases in which the pensioner has potentially committed perjury should be immediately evaluated by the Metro Law Department for referral to the District Attorney for prosecution.