

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
6/18/2019

SUBJECT:	SUBMITTED BY:
Administrative Process for Determining Eligibility for Benefits under the Public Safety Employee Benefits Act	Enza Petrarca Village Attorney

SYNOPSIS

An ordinance has been prepared to establish an administrative procedure to determine eligibility for continued health insurance benefits under the Public Safety Employee Benefits Act.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 includes *Exceptional Municipal Services*.

FISCAL IMPACT

The cost of providing health insurance benefits for public safety employees who are catastrophically injured or die in the line of duty, their spouse and eligible children.

UPDATE & RECOMMENDATION

This item was discussed at the June 11, 2019 Village Council meeting. Staff recommends approval on the June 18, 2019 Active Agenda.

BACKGROUND

The Illinois Public Safety Employee Benefits Act (“PSEBA” or the “Act”), 820 ILCS 320/1, *et seq.*, requires certain health insurance benefits to be provided to a public safety employee covered by the Act who suffers a catastrophic injury or is killed in the line of duty. The Act defines a public safety employee as any full time law enforcement, correction officer, firefighter or licensed emergency medical technician who is a sworn member of a public fire department. The same benefits may be extended to the spouse and eligible dependents of the employee. Courts have held that “catastrophic injury” is akin to being awarded a “line-of-duty disability pension” even if the employee can obtain other gainful employment.

In order for the public safety employee to be eligible for PSEBA benefits, the injury or death must have occurred as the result of the officer’s response to fresh pursuit, the officer or firefighter’s response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another, or during the investigation of a criminal act.

The Village, as an employer of public safety employees, may be required to pay the entire premium of the Village’s basic health insurance plan for an eligible public safety employee until death, for his/her spouse until death or until remarried, and for eligible dependents until the age of majority or until the end of the

calendar year in which the child reaches the age of 25 if the child continues to be dependent for support or the child is a full-time or part-time student and is dependent for support. In the ordinance the Village defines the “basic health insurance plan” as the Village’s high-deductible plan, as may be amended from time to time. However, benefits may be reduced if the employee or family member have health insurance benefits payable from any other source, including Medicare.

Illinois courts have stated that an employer of public safety employees can develop by ordinance administrative procedures to determine the eligibility of public safety employees for benefits under PSEBA. The attached ordinance establishes said procedure and includes the following key requirements:

- The employee or spouse or dependent (if the employee is deceased) must file a written application with the Human Resource Director with accompanying documentation.
- The Human Resources Director shall then review the application and engage in any additional fact-finding that may be necessary. Thereafter, the HR Director shall make a recommendation to the Village Manager regarding eligibility for benefits under PSEBA.
- The Village Manager shall then review the file and make a final determination of eligibility within 21 days. Any appeal of the Village Manager’s decision shall be through a writ of *certiorari* in the Circuit Court.
- If the applicant has been determined to be eligible for PSEBA benefits, the applicant must submit an affidavit each year attesting as to whether he/she is eligible for insurance benefits from any other sources.
- If the applicant provides any false statements or information or fails to cooperate in necessary fact-finding, then they will forfeit the right to receive PSEBA benefits.

ATTACHMENTS

Ordinance

VILLAGE OF DOWNERS GROVE COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: June 18, 2019
(Name)

RECOMMENDATION FROM: _____ FILE REF: _____
(Board or Department)

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "AN ORDINANCE ESTABLISHING AN ADMINISTRATIVE PROCEDURE FOR ASSESSING AND DETERMINING CLAIMS UNDER THE PUBLIC SAFETY EMPLOYEE BENEFITS ACT (PSEBA)", as presented.



SUMMARY OF ITEM:

Adoption of the attached ordinance shall establish an administrative procedure for assessing claims under the Public Safety Employee Benefits Act.

RECORD OF ACTION TAKEN:

**AN ORDINANCE ESTABLISHING AN ADMINISTRATIVE PROCEDURE
FOR ASSESSING AND DETERMINING CLAIMS UNDER
THE PUBLIC SAFETY EMPLOYEE BENEFITS ACT (PSEBA)**

WHEREAS, the Village of Downers Grove (the “Village”) is a home rule municipality in accordance with Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, pursuant to its Constitutional home rule powers, the Village has authority to “perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare” by adopting ordinances and promulgating rules and regulations that pertain to its government and affairs that protect the public health, safety, and welfare of its citizens; and

WHEREAS, in examining the grant of home rule authority in the Illinois Constitution, Illinois courts have noted that the “intentionally imprecise language grants local governmental units ‘the broadest powers possible’” *Palm v. 2800 Lake Shore Drive Condominium Ass’n*, 2013 IL 110505 ¶ 108; and

WHEREAS, Illinois courts have interpreted home rule authority broadly in the face of judicial activism, “the intent and purpose of the home rule provisions in the Illinois Constitution is to severely limit the judiciary’s authority to preempt home rule powers of municipalities through judicial interpretation of unexpressed legislative intent” *City of Oakbrook Terrace v. Suburban Bank and Trust Co.*, 364 Ill.App.3d (2nd Dist.2006); and

WHEREAS, home rule municipalities have been granted the constitutional authority to enact regulatory ordinances, “municipalities which have populations of more than 25,000 are home-rule units and may enact ordinances pertaining to municipal employees which conflict with State statutes concerning same matters,” *Burgess v. Board of Fire & Police Comm’rs*, 209 Ill.App.3d 821 (4th Dist. 1991); and

WHEREAS, the Public Safety Employee Benefits Act (“PSEBA” or “Act”) was enacted in 1997 to provide certain health insurance benefits to any public safety employee covered by the Act who suffers a catastrophic injury or is killed in the line of duty (820 ILCS 320/1 *et seq.*); and

WHEREAS, pursuant to the court’s holding in *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402, ¶ 37, the Village has the right to establish an “administrative procedure for assessing claims without acting in a manner inconsistent with the requirements of the Act”, including the ability to use home rule authority to enact an ordinance to determine, assess, and outline the administrative process for assessing eligibility under PSEBA; and

WHEREAS, the Village, under its home rule authority and pursuant to *Pedersen* has “the authority to establish an administrative procedure for determining claims for benefits under the Act,” (*Id.* at ¶ 63); and

WHEREAS, as a result of the decision in *Pedersen*, the Village now desires to adopt the following ordinance and finds that this is in the best interest of the citizens’ health, safety, and welfare.

NOW, THEREFORE, be it ordained by the corporate authorities of the Village of Downers Grove as follows:

Section 1. Purpose.

The purpose of this ordinance is to memorialize the process, as it may be administratively amended from time to time, for application for health insurance benefits under the Act; to provide a fair and efficient method for determining the eligibility of an Applicant for PSEBA benefits through an administrative process; and for the provision of benefits under the Act.

Section 2. Definitions.

“Act” means the Public Safety Employee Benefits Act (820 ILCS 320/1 *et seq.*).

“Applicant” means any person who files a written application as described herein to receive PSEBA benefits from the Village.

“Basic group health insurance plan” means the Village’s high-deductible plan, as may be amended from time to time.

“Recipient” means an Applicant who has been awarded PSEBA benefits by the Village.

“Village” means the Village of Downers Grove.

Section 3. Application.

- A. Any person seeking to receive PSEBA benefits from the Village must submit a full and complete application in writing, on a form provided by the Village, with all required supporting documentation, to the Director of Human Resources. The Applicant may submit any additional information that the Applicant wants to be considered in support of the application. The application must be submitted no later than thirty (30) days after the granting of a line-of-duty disability pension. The Village shall notify the Applicant if the PSEBA application is incomplete and Applicant shall have five (5) days to remedy the application. Failure to timely file the full and complete application shall result in a waiver and forfeiture of the claim for benefits under PSEBA.
- B. A complete PSEBA application includes the following:
 1. Answers to all questions included on the application form;
 2. A signed PSEBA medical authorization release which authorizes the collection of information related to the injury including, but not limited to, disability pension proceedings, worker’s compensation records, and medical records and specifies the name and address for pertinent health care provider(s);
 3. If necessary, a signed PSEBA general information release authorizing the collection of information pertinent to the incident review process;
 4. The name(s) and contact information, if known, of witnesses to the incident;
 5. Information and supporting pension documentation filed with the appropriate pension board, including all transcripts and exhibits;
 6. Information supporting the PSEBA eligibility requirements; and
 7. Information relating to eligibility for other sources of health insurance benefits, currently enrolled in, offered to, or received by the Applicant and/or family members and a description of the

benefits offered or received. This shall include written documentation from the other source of benefits, including but not limited to another employer of the employee or an employer of the employee's spouse or children.

- C. The PSEBA application must be sworn and notarized to certify the truthfulness of the information. A review of the application shall not occur until the application is complete. If the Applicant willfully and knowingly makes, or causes to be made, any false, fraudulent, or misleading oral or written statement to obtain health insurance coverage as provided by the Act, the Applicant forfeits any claim or right to receive benefits under the Act.

Section 4. Administrative Process.

- A. Upon receipt of a complete application, the Director of Human Resources shall review the application and engage in such additional fact-finding as may be deemed necessary or appropriate to evaluate the application.
1. If fact-finding is determined to be necessary, the Applicant shall fully cooperate in such fact-finding activity.
 2. If the Applicant refuses or otherwise fails to fully cooperate, then a reminder notice shall be sent to the Applicant explaining the duty of full cooperation in the fact-finding process.
 3. If the Applicant fails to cooperate as requested within twenty-one (21) days after receipt of such notice, then the application for benefits shall be deemed withdrawn and waived.
- B. Upon completion of the review of the application and any related investigation, the Director of Human Resources shall make a recommendation to the Village Manager concerning eligibility for benefits.
- C. Upon receipt of the recommendation of the Director of Human Resources, the Village Manager shall review the file to make a determination regarding eligibility. The determination shall be based on the application and supporting documentation provided by the Applicant and the fact-finding conducted by the Director of Human Resources. The burden shall be on the Applicant to provide the information necessary to demonstrate eligibility for benefits under the Act.
- D. Within twenty-one (21) days after receipt of the recommendation of the Director of Human Resources, the Village Manager shall advise the Applicant in writing of one of the following final determinations:
1. The Village approves the application and awards benefits under the Act; or
 2. The Village denies the application and does not award benefits under the Act.
- E. The Village Manager's decision shall be final and subject to review via a common law writ of *certiorari*.

Section 5. Health Insurance Benefits.

- A. If the Village determines that the Applicant is eligible for PSEBA benefits, the Applicant shall be enrolled in the Village's basic group health insurance plan.

- B. Health insurance benefits payable from any other sources shall reduce the benefits payable from the Village. Each Recipient shall be required to sign an affidavit each year attesting to the fact that he/she is not eligible for insurance benefits from any other sources.
- C. It is the responsibility of a Recipient to notify the Village within thirty (30) days of any changes to other sources of health insurance benefits. Receipt of benefits in violation of this provision will require the Recipient to reimburse the Village of any benefits received.
- D. A Recipient is also required to notify the Village when he/she becomes Medicare eligible so the Village can assist with the transition to Medicare coverage and/or adjust health insurance benefits accordingly.

Section 6. Severability.

If any provision of this Ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

Section 7. Conflict of Laws.

Where the conditions imposed by any provisions of this Ordinance are more restrictive than comparable provisions imposed elsewhere in any other local law, ordinance, resolution, rule or regulation, the regulations of this Ordinance will govern.

Section 8. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 9. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk

