



PUBLIC EDUCATION BENEFITS TRUST

DATE: January 6, 2021

TO: School District Finance and HR Staff, Local Support Staff Unions

FROM: Board of Trustees of the Public Education Benefits Trust Fund

RE: CIVIL LITIGATION

On a few occasions, the PEBT Board has been named as a party to a legal proceeding in the courts started by an employee as a result of a decision made in the adjudication of a Long Term Disability (LTD) claim. While these claims have thus far been rare, the PEBT Board felt it prudent to reaffirm our advice to School District Secretary-Treasurers and Local Support Staff Unions regarding our response to such claims.

Our response to any court proceeding will be that the PEBT and the LTD benefits it provides arose out of collective bargaining and that as a result, the court does not have jurisdiction to hear the matter. The B.C. Supreme Court has confirmed this position.

In the case of a dispute over entitlement to or continuation of LTD benefits, the parties to the Collective Agreement have agreed through bargaining that the Medical Appeal Panel procedure set out in the Core LTD document is the avenue Members must follow if they are not satisfied with the outcome of the internal review process of the LTD service provider, Desjardins Financial Security Life Assurance Company (Desjardins). This process is an alternative dispute resolution procedure to the normal grievance and arbitration procedure within the Collective Agreement. The determination of the Medical Appeal Panel is final and binding on all parties.

There may be exceptions to the foregoing. For example, a claim may be denied because it was not submitted in a timely manner by the Employer. In such a case, PEBT will take the position that the Employer should actively defend the claim as it sees fit and should bear any liability to satisfy any award the arbitrator may hand down.

There may also be unusual circumstances where a Member wishes to pursue some form of legal recourse which is outside the scope of a Medical Appeal Panel. In such a case the grievance and arbitration process under the collective agreement is the avenue the Member must follow. The grievance would be assessed on the merits by the Local Union and if appropriate would be initiated by the Local Union against the Employer. Any such grievance should not be resolved without input from the PEBT and Desjardins.

Should the matter be referred to arbitration, the Employer and the Local Union would be parties to the proceedings. However, to effectively adjudicate the claim the Employer and the Union should notify the PEBT and we will consent to be added as a party and, where appropriate, will seek Desjardins consent to be added as well. We would expect that in most cases the parties to the arbitration would consent to adding PEBT and/or Desjardins as parties. However, since the rights of third parties (i.e., the PEBT and Desjardins) could be adversely affected by the award, the PEBT will apply for intervener status where its addition as a party is not reached by agreement. Once added as a party, the PEBT and/or Desjardins will assume conduct of the defense on the merits.

In any case, the PEBT asks that Employers and Local Unions notify us of all grievances and arbitrations which concern PEBT benefits so that the PEBT can ascertain the role it should play and ensure that the merits of the dispute are resolved appropriately.

Should you have any questions or concerns regarding the foregoing, please forward them in writing to Lori Lofthaug at lofthaug.pebt@cupe.ca or via fax at 604-291-1194.