

Final
Report

Montgomery County Disability Retirement and Long-Term Disability Programs

Report # OIG-18-003

April 9, 2018

Montgomery County Maryland
Office of the Inspector General



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Report in
Brief

Montgomery County Disability Retirement and Long-Term Disability Programs

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Background

There are three primary programs that may provide income to County employees who can no longer perform their jobs due to medical conditions: County disability retirement/ long-term disability, County workers' compensation, and U.S. Social Security Disability. This audit focuses on County disability benefits.

Why We Did This Audit

Prior reviews by the County's Office of the Inspector General and Office of Internal Audit identified weaknesses in the County's administration of disability retirement benefits. This review examines the disability benefit process and determines whether certain County Code requirements related to the application, medical examination, income review, and workers' compensation offset processes were followed.

What We Found

Management of the programs has changed since the time periods in which the weaknesses identified in the prior reviews occurred. In this review, we found that (1) the complexity of the County's disability benefits program makes it costly and burdensome to administer and creates opportunities for errors, (2) Montgomery County Employee Retirement Plans (MCERP) did not timely conduct 4 of the medical re-evaluations required for the 60 files we tested, and (3) the County might reduce costs by accepting determinations from and adopting parts of the federal Social Security disability process.

What We Recommend

(1) The County should not reach agreements on subjects of labor negotiations for which the costs and the consequences have not been determined. (2) MCERP should improve its data and databases to ensure medical re-evaluations are timely. (3) MCERP and the Chief Administrative Officer should make use of the Social Security disability processes, where there is overlap with County definitions and processes, such as (a) determining certain medical evaluations and re-evaluations are not needed, (b) determining less frequent medical re-evaluations are needed in certain cases, and (c) proposing a change in the law to require that all County disability applicants be required to apply for Social Security disability benefits.

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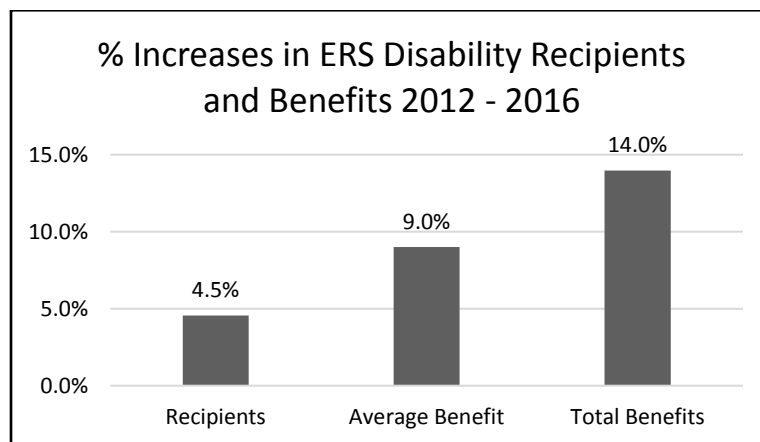
Montgomery County Disability Retirement and Long-Term Disability Programs

Introduction

There are three primary programs that may provide income to County employees who can no longer perform their jobs due to medical conditions: County disability retirement/ long-term disability, workers' compensation, and U.S. Social Security Disability. This audit focuses on County disability benefits and does not address general County retirement or County workers' compensation issues, other than offsetting for other County payments made. We may inquire into these other issues in the future.

Strong internal controls are required for the County to ensure both that disability benefits are provided only to those people who are legitimately eligible and that the amounts of the benefits legitimately paid are consistent with the requirements of the benefit plan. A challenge for the County is to design and implement controls that are reasonably effective, without being overly burdensome and costly to implement.

Obviously, the key factors affecting the costs of benefits distributed from the plan are the number of individuals receiving disability benefits and the amount of the benefit received by each person. The following chart shows that the number of Employees' Retirement System (ERS) disability recipients increased 4.5% from FY 2012-2016. However, total disability benefits paid increased 14%.



Source: FY2016 Consolidated Annual Financial Report and Office of the Inspector General calculations.

Disability benefits are calculated as a percentage of the County salaries of the people receiving the benefits, so an increase in salaries will cause disability benefits to increase. The average disability benefit in FY2016 was \$44,660 per year¹, and it increased 9% from FY 2012-2016. By comparison, over the same period, County salaries increased 17% for those not at the top of their pay grades and 9% for others.

This review does not determine error rates specifically related to the calculations of disability benefits. Instead, it examines the process and looks at process errors.

Prior Reviews and Developments

In 2008, 2009, and 2010, the Montgomery County Office of the Inspector General (OIG) conducted reviews making multiple findings with the administration of disability benefits, including that medical examinations were not being done. Partly because of the OIG reports, the County Code was amended in 2009 to require independent medical examinations for disability retirement/ long-term disability payees.

In 2012, the County's Employee Retirement Plans (MCERP) office took over the administration of disability benefits from the County's Office of Human Resources. MCERP began with a backlog of medical and income evaluations to perform. The Executive Director of MCERP (Executive Director) informed the OIG in April of 2017 that since the disability benefit function was transferred to MCERP, all the recipients of disability benefits who are required to be medically re-evaluated had received those evaluations at least once.

In 2013, the Montgomery County Office of Internal Audit (Internal Audit) issued a report that in part followed up on recommendations made in prior OIG reports. Internal Audit, after analyzing a sample of the County's 2012 disability data, reported that there were relatively high error rates in the completion of applicable checklists, the approval of benefits, and in the completion of required medical re-evaluations. Internal Audit also noted that control procedures for identifying other income sources were lacking. Internal Audit's findings reflected the situation before MCERP began administering disability benefits.

Objectives, Scope, and Methodology

We conducted this audit in accordance with *Government Auditing Standards* issued by the U.S. Government Accountability Office, and *Principles and Standards for Offices of Inspector General* issued by the Association of Inspectors General.

¹ The average regular (non-disability) retirement benefit was \$35,107.

Programs Providing Benefits to Disabled Employees

There are three government programs that may provide income to County employees who can no longer perform their jobs due to medical conditions: County workers' compensation, County disability, and U.S. Social Security Disability.

Workers' compensation is mandated by State law. County disability benefits are not governed by State law. They are governed by County law and are subject to collective bargaining. Social Security is governed by Federal law.

Every County employee is covered by workers' compensation for an on-the-job injury or development of a work-related disease. Every County employee who becomes disabled, regardless of retirement plan, could be covered by Social Security Disability, if the Social Security definition of disability is met. These programs could work in tandem with the County's disability benefits.

The following table compares these programs.

Workers' Compensation and Disability Programs

	Work-related or not	Partial or Total
County Workers' Compensation	Only work-related	Both
County Disability	Both	Both
Social Security Disability	Both	Only Total

The County provides its employees with workers' compensation coverage as mandated by the State of Maryland. Under workers' compensation, an employee with a permanent total disability can receive $66 \frac{2}{3}$ of his or her previous wages, with certain limitations. The County's Division of Risk Management within the Department of Finance manages² the County's workers' compensation program.

County Fire & Rescue and County Police accounted for 33% and 32% of workers' compensation claims, respectively, from January 2011 through June 2012, according to the County's Office of Legislative Oversight. These two departments, together with the Department of

² County Workers' compensation is funded by the Liability and Property Coverage Self-Insurance Fund. The total FY 2018 operating budget for the Self-Insurance Fund is \$67 million.

Transportation, which had the third highest number of workers' compensation claims, accounted for approximately 80% of all claims filed and days lost from work.

In FY2016, departments with the most disability applicants were Transportation (30%), Police (22%), and Fire & Rescue (22%). The numbers of applicants from Police and Fire & Rescue declined between FY2012 and FY2016. Other departments had far fewer disability applicants. Fire & Rescue and Police accounted for 31% and 32% of disability payments, respectively, during FY2016.

County disability retirement/long-term disability is governed by the County Code and is subject to collective bargaining. The County has collective bargaining agreements with three separate employee organizations.

County employees who participate in the ERS and become disabled can receive County disability retirement/ long-term disability payments, whether the medical condition is job-related or not and whether the disability is partial or total. The benefit amounts vary by these factors.

Disabilities from job-related injuries or diseases are termed service-connected disabilities (SCD), and other disabilities are termed non-service-connected disabilities (non-SCD). Benefits for SCD are greater than benefits for non-SCD.

In addition to other requirements under the County Code, a person may qualify as disabled if the person cannot perform the duties of the current position or in some cases a substantially similar position due to a medical condition that is expected to last at least 12 months, and that may be or is likely to be permanent. For more detail on the requirements for disability retirement and long-term disability benefits, see Appendix C. Positions such as police officer have specific physical requirements, so an injury that would not prevent people from performing many jobs would prevent police officers from doing their jobs.

For County disability retirement recipients, a SCD benefit is at least 52.5% of final earnings for a partial disability and at least 70% for a total disability; a non-SCD benefit is 33% of final earnings or the normal retirement amount. For employees who are members of the County's defined contribution plan, partial SCD benefits are 52.5% of final earnings, Total SCD benefits are 70% of final earnings, and non-SCD benefits are between 30% and 60% of final earnings. Agreements with unions address the percentages of final earnings that make up the benefit.

The County Employees' Retirement System (ERS) pays out over \$50 million per year on disability benefits for County employees. The County Government makes an annual contribution to the ERS, which covers regular retirement payments, in addition to disability retirement, based on a

calculation by the County's actuary considering pension fund assets, accrued liabilities, and demographic assumptions. In FY 2017, the County's contribution was \$84.74 million³.

The County Code contains provisions allowing the County to offset its disability payments and its workers' compensation payments to prevent payees from receiving both.

County Retirement Plans and Disability Benefits

The County has two main types of retirement plans: defined benefit and defined contribution. In FY2016, almost all the disability payees were in the defined benefit plan (1175 were in that plan). Only 58 disability payees were in the defined contribution plan in FY2016.

1) Disability Benefits under the Defined Benefit Retirement Plan - ERS

The County's defined benefit plan is called the Employees' Retirement System (ERS).

Public safety employees represented by bargaining units and all employees hired before October 1, 1994 are eligible to be members of the defined benefit plan. At normal retirement, employees in the defined benefit plan, also called a pension plan, receive a percentage of earnings multiplied by years of credited service. Disability benefits may exceed retirement benefits.

The OIG calculated that a large majority (83%) of former County employees who were receiving disability payments through the defined benefit plan had service-connected disabilities in FY2016.

2) Disability Benefits under the Defined Contribution Retirement Plan – LTD₂

The Employee Retirement Savings Plan (RSP) is a defined contribution plan⁴. Employees in the RSP receive disability benefits through the Disability Benefits Plan, which is termed "LTD₂"⁵. LTD₂ benefits continue until age 70.

Almost all non-public safety employees hired on or after October 1, 1994 must be members of the defined contribution plan and may not be members of the defined benefit plan. Employees in the defined contribution plan are automatically covered by the County's long term disability plan, which is sponsored by the County. The County pays 75% of the cost of the premiums, and the employees pay 25%.

³ The County's plan was 91.7% funded as of June 30, 2016. Since this number is below 100%, additional assets will be required in future years to meet forthcoming liabilities.

⁴ The County also has a defined contribution plan known as the Guaranteed Retirement Income Plan (GRIP). It has a guaranteed return on a defined contribution.

⁵ GRIP members are also eligible for the Disability Benefits Plan.

When employees in the defined contribution plan retire, they typically receive retirement payments based on their contributions and investment earnings.

For LTD2 recipients, a SCD benefit is 52.5% of salary for a partial disability and 70% for a total disability. A non-SCD benefit is 2% of salary per year for each year of County employment, with a minimum benefit of 30% of salary and a maximum benefit of 60% of salary.

Administration of Benefits

MCERP's expenses for processing disability retirement/ long-term disability benefits were approximately \$419,000 in FY2017. This number includes the cost of medical reviewers but does not include MCERP staff salary and benefits. When an estimate of these is included, the total MCERP disability administration expenses are estimated to be a minimum of \$700,000 annually. In addition, there are costs in the Office of the County Attorney, which estimates that the costs associated with reviewing Disability Review Panel decisions, advising MCERP, and handling appeals is approximately \$380,000 per year.

The County's Disability Review Panel (DRP) reviews all applications for disability benefits. The DRP is made up of four medical doctors. The County pays compensation to the DRP members and to the impartial medical organization retained by the County to provide names of impartial medical doctors willing to serve. The County also pays the cost of the independent medical examinations required of disability applicants. MCERP receives applications, provides an initial calculation of benefits, collects medical information, and forwards the applications to the DRP.

Under the County Code, the Chief Administrative Officer (CAO) or designee issues a final decision regarding whether the applicant meets the criteria for disability benefits after the CAO receives the DRP's determination⁶. As a matter of practice, the CAO's decision is made after the CAO receives the County Attorney's Office's approval of the DRP decision. The CAO's decisions may be appealed to one of the County's Disability Arbitration Boards⁷.

Of the 41 applications for County disability benefits in FY2016, the DRP approved benefits for 28 (68%) and denied benefits for 13 (32%). The CAO agreed with all of the DRPs FY2016 decisions.

⁶ County Code § 33-43(d)(9), §33-128(i)(6).

⁷ County Code § 33-43(l) and § 33-138. Issues that Disability Arbitration Boards might consider include the degree of impairment, the permanence of the disability, whether the employee can perform his or her job, whether the cause of the disability was job-related, and whether the disability was preexisting.

Findings & Recommendations

This report contains three findings and related recommendations.

Summary of Results

Management of the programs has changed since the time periods in which the weaknesses identified in the prior reviews occurred.

The following chart summarizes the results of this OIG review compared to the exceptions found by the Internal Audit review completed in 2013. It shows that MCERP has made significant progress since taking over the administration of disability benefits in 2012. For more detailed discussions of the topics in this chart other than Medical re-evaluations, see the section titled “Other OIG Testing” below.

	Internal Audit 2012 Noncompliance	OIG FY2016 Noncompliance*
Medical re-evaluations of recipients	100%	7%
Income checks of recipients	100%	0%
Application approved by DRP	18%	0%
Application approved by County Attorney	19%	0%
Application approved by CAO	7%	0%
Application checklists	43%	0%**
Offsets to disability benefits for workers’ compensation benefits	Not addressed	0%
Offsets to workers’ compensation benefits for disability benefits	Not addressed	0%

Source: Internal Audit 2013 Report and OIG Review of MCERP data.

* The first six rows show results from OIG worksheets based on statistical samples. The final two rows show results from discussions with and examples provided by MCERP and the Division of Risk Management.

** Checklists were replaced by automated spreadsheets.

Finding 1: The complexity of the County's disability benefits program makes it costly and burdensome to administer and creates opportunities for errors.

The County laws specifically governing disability benefits span 25 pages of the County Code and 20 pages of the County Regulations, and administering them can be difficult, time-consuming, and costly.

One reason that the disability benefits are complicated to administer is that Montgomery County has two types of employee retirement plans, each with associated disability benefits and requirements, as discussed above.

Another reason that disability benefits are complicated to administer is that disability retirement benefits are a mandatory topic of collective bargaining, and the County has collective bargaining agreements with three separate employee organizations. The agreements are re-negotiated every one to three years. The retirement and disability benefit provisions in the agreements typically call for the County Executive to seek an amendment to the County Code to implement any changes, and the County Council then decides whether to amend the Code to make the changes effective.

Another reason that administering disability benefits is complicated is that changes to retirement and disability benefits are usually not retroactive. The Office of the County Attorney has explained that the Contract Clause of the United States Constitution prohibits retroactive impairments of contracts, and a Contract Clause violation can be avoided if legislative changes only apply after the effective date of the legislation and after the expiration of the current collective bargaining agreements.

As a result, the County Code contains disability-related provisions that do not apply, depending on the dates events occurred. Administrative requirements and benefits vary by employee membership group, with Police and Fire & Rescue and MCGEO members having bargained different terms.

In this report, the OIG tested whether medical and income reviews were conducted as required by law. For these reviews, many facts must be gathered and multiple rules must be consulted.

Whether medical re-evaluations are required depends on the following factors:

- the age of the recipient,
- the number of years since the disability award,
- which of eight membership groups the employee belongs to, and
- the retirement plan.

Whether income evaluations are required and what income may be offset for varies depending on the following:

- whether the disability was service-connected (related to employment),
- the retirement plan,
- the employee membership group (Police, Fire, or other),
- the date of hire,
- the disability application date,
- the date of disability award,
- the age of the employee and the normal retirement age,
- the salary of the occupation from which the person was disabled, and
- the source of the income.

The rules for aging out of medical reviews are not the same as the rules for aging out of income reviews.

Agreements with unions include provisions setting out when the County may reduce disability payments based on income.

The rules are so complicated that MCERP relies on guidance from the Office of the County Attorney to implement them, and that guidance itself is complicated. The chart that the Office of the County Attorney developed for MCERP to guide the income reviews and offsets spans 12 pages.

MCERP has received guidance for medical re-evaluations from the Office of the County Attorney that differs from what MCERP understood prior to November 2017. In November of 2017, the Office of the County Attorney indicated to MCERP that a different analysis applied for certain employees. This may result in fewer re-evaluations being conducted.

The OIG reviewed four Fiscal Impact Statements for legislation changing disability benefits since 2008. These were prepared by the Directors of the County's Office of Management and Budget. The most recent one, for Bill 33-17, estimated that if the age for termination of LTD₂ benefits was extended from 65 to 70, there would be an increased cost to the County of \$420,000 per year in benefits. The statement stated that there would be no additional staff costs for staff to implement the legislation, but the OIG questions whether the administrative burden on staff would not increase, simply because there would be more years of benefits to administer.

Two Fiscal Impact Statements from 2008 and 2010 estimated savings to the County, although they noted that the fiscal impacts could not be precisely estimated. One did not address the burden on staff, while the other estimated that the increased staff necessary to implement the legislation could reduce the savings by up to 40%, because of additional administrative staff that would be needed and costs related to medical evaluations by doctors. County Attorney staff time is not included in the estimate of staff costs. The OIG suggests that MCERP might revisit

these estimates and determine if they were accurate, considering administration and benefits costs.

The Fiscal Impact Statements, even if thorough and reasonably accurate, are not completed until legislation is before the Council, which typically occurs after the negotiations have concluded. Negotiators should not be making decisions that effectively bind elected officials making appropriations, without knowing the full costs of the possible changes, including administrative costs.

Recommendation 1

The County should not reach agreements on subjects of labor negotiations for which the costs and the consequences have not been determined.

Finding 2: MCERP did not timely conduct 4 of the medical re-evaluations required for the 60 files we tested.

The CAO must require an ERS recipient of disability pension payments to submit, annually for the first 5 years of retirement, the results of a physical examination or a medical doctor's certificate verifying continuation of the disability.⁸ After the initial 5 years, these must be submitted once every 3 years until no longer required.

Medical re-evaluations are required for determining if certain disability recipients continue to qualify for disability payments.

There are exceptions to this requirement. If the CAO finds that a physical examination is unnecessary because of the nature and severity of the injury or illness, the examination is not required. The re-evaluation requirement ends when the member reaches age 55 or 60, depending on the employee membership group.

⁸ The Code was changed in 2009 to make the ERS medical re-evaluations and the ones for LTD2 recipients mandatory, based on problems found by the OIG.

For LTD2 recipients, the CAO must require a recipient of disability payments to undergo⁹ annual or less frequent medical examinations, or to submit a medical doctor's certificate verifying the continuation of the disability, unless the CAO finds that a physical examination in a specific case is unnecessary because of the nature and severity of the injury or illness¹⁰. Re-evaluations begin 3 years after the initial disability determination, and are then required annually. This requirement ends when the member reaches age 70.

In administering the medical re-evaluation process, MCERP staff:

- analyzes which disability recipients should receive medical re-evaluations,
- requests and collects medical information from the disability recipients,
- forwards medical information to the physician reviewers,
- receives reports from the physician reviewers, sends the reports to the Office of the County Attorney (County Attorney) along with draft County Attorney memoranda,
- receives the signed County Attorney memoranda,
- sends the report and County Attorney memoranda to the CAO along with draft CAO memoranda,
- receives signed memoranda from the CAO,
- informs the disability recipient of the outcome,
- adjusts benefits according to the CAO determination,
- keeps files, and tracks the process.

Analyzing whether disability recipients should receive medical re-evaluations is a labor-intensive, manual process that is prone to error. The OIG found a 7% error rate (4 of 60 files we tested) when it reviewed a sample to determine whether medical re-evaluations were conducted as required.

Every January, the Disability Manager receives a list of disability recipients. The re-evaluation due date is determined based on the last re-evaluation date, which is the CAO approval date. Also taken into consideration are the re-evaluation rules per retirement plan and employee membership group. Monthly, the Disability Manager identifies the disability recipients who should receive medical re-evaluations based on the re-evaluation due date and mails them letters via regular and certified mail requesting medical information. Many of these processes are written in a detailed flow chart of the Disability Manager's work. We did not receive formal written policies and procedures regarding this determination, although we did receive draft policies and procedures.

⁹ County Code § 33-135(a) states that the employee "must" be required "to undergo annual or less frequent medical examinations". The phrase "or less frequent" could be read to require virtually no examinations.

¹⁰ County Code § 33-135(a).

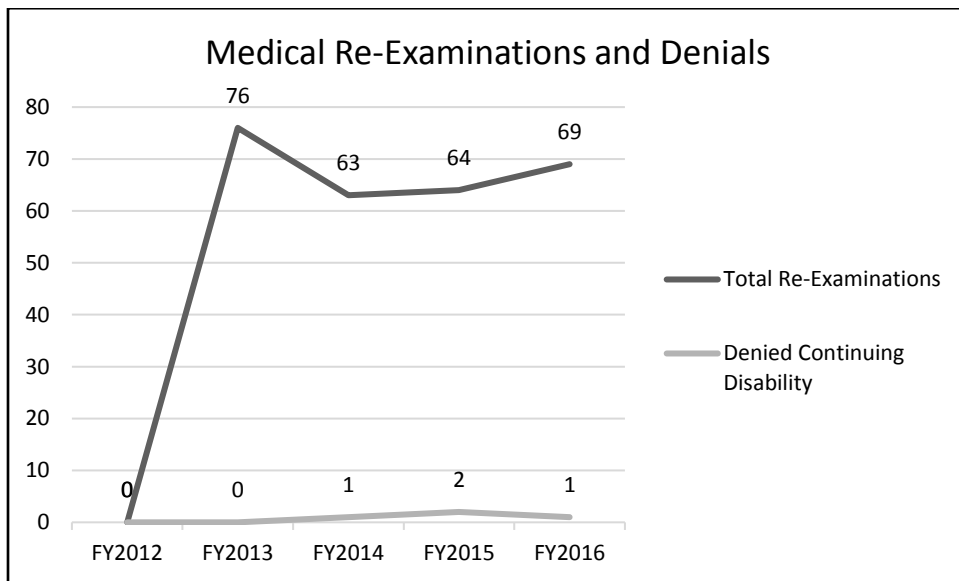
If the disability recipients do not provide the requested information within 30 days, the Disability Manager sends a second request letter. If the information is not received within the next 30 days, the Disability Manager sends a final request. If the information is not received within 30 days of the final letter, benefit payments are stopped. In the group of 45 people whose evaluations were pending when the OIG requested information in February of 2017, 21 (47%) were sent second letters, and 8 of these (38%) were sent final letters.

If after a medical re-evaluation a disability recipient is determined to no longer qualify for disability payments, the Chief Administrative Officer may discontinue disability retirement/long-term disability payments.

Internal Audit Review

The Internal Audit report tested 2012 data for evidence of medical re-evaluations and found that re-evaluations were not performed in 100% of the disability files in the sample it tested.

MCERP has obtained 63 to 76 medical re-evaluations per year since taking responsibility for them in FY2013, as shown in the following chart.



Source: Employee Retirement Plans data

As a result of these re-evaluations, some disability recipients were denied continued disability payments in recent years: 1 in 2014, 2 in 2015, and 1 in 2016, for a total of four through 2016.

Reduced Costs

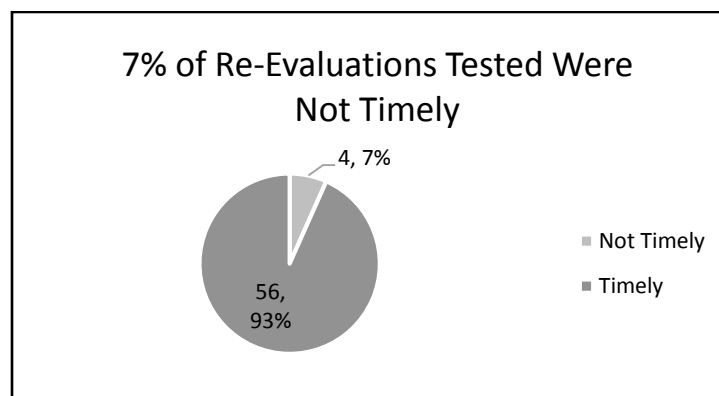
While the annual numbers of denials are small, cumulatively they represent significant costs over time, as the future payment streams to these individuals will not be made. In FY 2016, the average disability benefit was \$44,660, so correcting benefits for these four people resulted in the County paying an estimated \$178,640 less in benefits in 2016.

If a similar pattern continues, and one additional person is denied continued payments each year for 2017 through 2021, the County could reduce costs an estimated \$1.7 million, assuming no change in average benefits¹¹ over that five-year period. If the average benefit grows 2% per year, then the County costs would decline \$ 1.8 million over five years.

OIG Testing for Medical Re-Evaluations

According to the Executive Director, a total of 73 of over 1200 payees were required to have medical re-evaluations in FY2016. To test whether the medical re-evaluations were required and done for FY2016, the OIG reviewed a statistical sample of 60 payee files randomly selected from 509 payee files¹². The confidence level for this analysis was 90%.

The OIG concluded that 56 (93%) of the tested files received timely re-evaluations, and 4 (7%) did not.



Source: OIG analysis of MCERP data

The cause for three of the four untimely medical re-evaluations was MCERP data entry error. In the fourth case, the fact that the required re-evaluation had not been done did not become apparent until the spreadsheet was reformatted.

The OIG initially identified 12 disability recipients who had not received medical re-evaluations within the required one or three years. However, the Executive Director informed the OIG that 8 of these had been re-evaluated timely, using a different methodology than the OIG used. The Executive Director agreed that four had not been re-evaluated timely. The numbers differed because there were multiple ways to apply the legal requirements. For clarity, MCERP should document its methodology in MCERP policies and procedures.

¹¹ This also assumes that none of the people denied benefits from 2014 on would have aged out of receiving benefits in that period.

¹² There were 1,233 payees. After excluding survivors, beneficiaries of Qualified Domestic Restraining Orders, and the oldest payees, there were 509 payees left.

The OIG collected data in April of 2017, using the medical re-evaluation requirements as understood by MCERP at the time. These requirements are reflected in a one-page chart showing how frequently medical re-evaluations are required for different groups of employees. Subsequent information from the Office of the County Attorney in November of 2017 indicated that these processes may need to be modified.

New guidance received from the Office of the County Attorney may result in a reduction in the number of re-evaluations that may be required in future periods.

Recommendation 2

MCERP should improve its data and databases to ensure medical re-evaluations are timely.

Finding 3: The County could reduce costs by accepting determinations from and adopting parts of the federal Social Security disability process.

County disability payees may also qualify for disability payments from the U.S. Social Security Administration (Social Security)¹³. Social Security requires people to undergo medical evaluations and re-evaluations to receive Social Security disability benefits. Currently, the County's medical re-evaluation process does not include consideration of Social Security's medical re-evaluations.

If the County could make use of or adopt Social Security disability processes, the County might be able to simplify its processes and reduce costs. Simplified County processes might also lessen the inconvenience to disability recipients, as there could be fewer demands on them to go through medical reviews.

The County's disability administration expenses were \$419,000 In FY 2017. This figure includes the costs of medical reviews, but it does not include MCERP salaries and benefits, which MCERP estimates are at least \$280,000. Including MCERP's estimated minimum salary and benefit costs, MCERP's disability administration costs for FY 2017 were a minimum of approximately \$700,000. In addition, there are related costs in the Office of the County Attorney.

¹³ The County deducts the amount of Social Security benefits from County payments in some circumstances.

MCERP and the Chief Administrative Officer (CAO) might be able to achieve cost savings, based on making use of Social Security processes or adopting similar processes.

Three possible modifications to the County’s processes are discussed below. Two would not require changes to County law, but one may require an amendment to County law. These changes might also affect provisions of collective bargaining agreements.

1) Accept Certain Social Security Determinations (Change in County Law Not Required)

The CAO might determine that neither County medical evaluations nor re-evaluations are needed for people whom Social Security has determined are disabled with no improvement expected. Under the County Code, the CAO may determine that a physical examination is unnecessary because of the nature and severity of the injury or illness.

Montgomery County’s definition of disability differs from Social Security’s definition, as shown in the chart below. For more detail on the requirements for disability retirement and long-term disability benefits, see Appendices C and D.

Summaries of Definitions of Disability

<p>Montgomery County: disabled</p>	<p>A person is disabled if the person cannot perform the current position or certain other positions due to a medical condition that</p> <ul style="list-style-type: none"> • is expected to last at least 12 months • may be or is likely to be permanent
<p>Social Security: disabled</p>	<p>A person is disabled if the person cannot work due to a medical condition that</p> <ul style="list-style-type: none"> • is expected to last at least 12 months or result in death
<p>Social Security: Medical improvement not expected</p>	<p>The person is disabled according to the above Social Security definition and medical improvement is not expected.</p>

Sources: Social Security, MCERP, County Code §33-43 and § 33-128.

The County could conclude that if Social Security determines that a person is disabled with no medical improvement expected, then the person is also disabled under County law, the logic being that if someone cannot perform any job (the Social Security requirement), then the person also cannot perform his or her County job or a substantially similar one (the County requirement).

The County could accept documentation of Social Security evaluations in these cases in lieu of conducting County evaluations. Although the Social Security Administration recently had a large backlog of medical re-evaluations to perform, the Social Security Administration expects to eliminate the backlog by the end of FY 2018.

Considering Social Security processes would not be new for the County. The County Code currently refers to a Social Security definition when determining if a person should receive a disability benefit for a partial or a total incapacity¹⁴.

2) Determine that Certain Cases Do Not Require Frequent Review (Change in County Law Not Required)

The CAO might apply similar frequency requirements to the Social Security requirements and determine that when improvement is not expected, County medical re-evaluations are needed only every 7 years. Montgomery County’s re-evaluation frequency requirements differ from the Social Security frequency requirements, as the following table shows:

Re-Evaluation Frequency

Social Security	If improvement is not expected, evaluate every 5-7 years; otherwise evaluate about every 3 years.
Montgomery County	Evaluate every year or every 3 years, depending on the applicable rules.

Source: Social Security and MCERP.

3) Require All Applicants to Apply for Social Security Disability (May Require a Change in County Law)

MCERP or the CAO might propose a change in County law to require that all County disability applicants be required to apply for Social Security disability benefits. This could reduce costs, as the County could then make use of some Social Security medical evaluations, as discussed above. In addition, this might result in lower County benefit costs, as additional people might qualify for Social Security benefits, and the County might be able to offset County disability benefits by the amount of Social Security benefits.

Currently, Montgomery County does not require most of its disability applicants to apply for Social Security disability benefits, but it does require this of its LTD2 disability recipients. Fairfax

¹⁴ County Code § 33-43 (b) provides that total incapacity “means the member’s inability to perform substantial gainful activity because of an impairment that: (1) is unlikely to resolve in the next 12 months, and (2) may be permanent” and provides that “The County must give the term substantial gainful activity the same meaning as the term is given by the U.S. Social Security Administration.”

County, Virginia, similarly only requires some of its disability applicants to apply for Social Security disability.

By contrast, the following employers require that all or some of their disability applicants not only apply for but also qualify for Social Security disability benefits: Anne Arundel County, Maryland; Washington County, Maryland; and the Washington Suburban Sanitary Commission. This requirement enables an employer to simply rely on Social Security determinations and not expend resources evaluating and re-evaluating disability applicants and recipients.

The OIG tested a sample of MCERP's files with 2016 income information and found that 15%, and possibly more, of the County disability recipients were also receiving Social Security disability¹⁵. Data provided by the Executive Director indicate that 32% of County disability recipients also receive Social Security payments, but information was not available on what portion of these were disability benefits, as opposed to regular retirement benefits.

The OIG estimates that if MCERP could reduce by 15% its \$419,000 per year in administrative costs, which are largely costs related to medical reviews, and if MCERP could reduce by 15% half of its estimated \$280,000 in salary and benefits costs for benefit administration (assuming income review costs are the other half), then MCERP could reduce costs by \$83,850 per year by foregoing medical examinations for people who had already been determined by Social Security to be disabled and not expected to improve¹⁶.

MCERP could possibly reduce costs further, if more disability recipients applied for and received Social Security disability benefits.

Other jurisdictions and agencies

During this review, we took note of programs used by other local government agencies and jurisdictions that offer disability benefits and whose programs differ from those of Montgomery County.

The Maryland-National Capital Park and Planning Commission eliminated disability retirement in 1982 and replaced it with long-term disability insurance¹⁷. The Commission pays 80% of the cost of the premiums, and the employees pay 20% of the cost.

Washington Suburban Sanitary Commission (WSSC) employees must qualify for Social Security disability in order to receive WSSC disability benefits. WSSC relies on the Social Security disability medical examinations and does not conduct its own.

¹⁵ MCERP advised that if a person received Social Security and was under 62 years old, this payment would have to be a disability payment, since people of this age do not qualify for Social Security retirement. Other County payees received Social Security and were 62 or older, so the OIG could not determine whether these were disability payments.

¹⁶ This amount would be reduced to the extent that payees were expected to improve.

¹⁷ Members receive free credited service until their normal retirement dates.

Like Montgomery County, the following jurisdictions do not require their disability benefit recipients to qualify for Social Security disability benefits: the State of Maryland; Howard County, Maryland; Baltimore County, Maryland; and Fairfax County, Virginia.

By contrast, Anne Arundel County, Maryland and Washington County, Maryland require that some or all of their recipients of disability benefits qualify for Social Security disability benefits.

Although thorough research of these alternatives was outside the scope of this audit, our brief review of these programs makes it clear that many reasonable alternatives exist that could be employed to achieve the County's apparent objectives of providing disability benefits. Such alternatives could simplify programs and likely reduce the overall costs to the County. The County should consider establishing a committee to review such alternatives.

Recommendation 3

MCERP and the Chief Administrative Officer should make use of the Social Security disability processes, such as by (a) determining medical evaluations and re-evaluations are not needed for people with Social Security determinations that they are disabled and improvement is not expected, (b) determining less frequent medical re-evaluations are needed where improvement is not expected, and (c) proposing a change in the law to require that all County disability applicants be required to apply for Social Security disability benefits.

Other OIG Testing

Disability Application Processing

In 2013, Internal Audit reviewed a random sample of disability files and found that a Disability Review Panel approval was missing from 18% of the files, a County Attorney review was missing from 19%, and a Chief Administrative Officer approval was missing from 7% of files. Internal Audit also reported that in 43% of the files, there was not a properly completed checklist.

The OIG tested the files of all 35 of the County's FY2016 disability applicants. The OIG found 100% compliance with the application attributes that Internal Audit tested.

Income Verification

Disability benefits must be reduced for retirees who receive certain income, such as, in some cases, income from other employment¹⁸.

However, the rules for what type of income results in offsets are complicated, and a Retirement Analyst examines each case to determine what offsets are required, depending on factors

¹⁸ County Code 33-134 and 33-43(j).

including the type of income and the disability award date. For example, the County may not offset County benefits for earned income by Police members with an award date after July 1, 2012, except for income from County employment or, for those with service-connected disabilities, for income earned as a sworn law enforcement officer with full powers of arrest and authority to carry a firearm.

The Executive Director stated that MCERP checks recipients monthly for County employment and annually for employment with an outside agency, and if someone is a current County or outside agency employee, pension payments are stopped.

The Internal Audit review of 2012 data stated that there were no control procedures implemented to identify if a retiree received disability benefits from another employer or source for the same injury.

OIG Testing for Income Verifications:

The OIG reviewed 60 randomly selected disability payee files. For 58 (97%) of the 60 files, MCERP had collected income information¹⁹. Payments were stopped to the two payees in the OIG sample who had not provided income information. MCERP received information from these payees by July 31, 2017. The OIG concluded that for 100% of the files tested, MCERP had taken appropriate steps to obtain the income data and had utilized the appropriate controls.

MCERP analyzed the income information received from all the disability payees tested by the OIG. MCERP partially or totally offset payments to 51 recipients²⁰, and MCERP provided information indicating that the offsets for the ten ERS SCD recipients totaled \$263,000. The offsets for the LTD2 recipients totaled approximately \$49,000 in 2016.

Based on the mostly complete 2017 income verifications, most (55%) ERS disability retirees are working.

Avoiding Duplicate Disability and Workers' Compensation Payments

The County Code contains two provisions requiring offsets related to workers' compensation and disability benefits: § 33-43(d)(11) and § 33-134.

Offset 1: Retroactive Disability Benefits are Offset

A newly approved recipient of disability benefits may be owed retroactive benefits, for the time between the beginning of disability retirement and the starting date of the benefit. The County

¹⁹ Most of the income information was in the form of copies of tax returns and associated documents provided by the disability recipients.

²⁰ The recipients were made up of 2 ERS non-SCD, 10 ERS SCD, and 39 LTD2 recipients.

Code states that for certain employees ²¹, the amount of this lump sum disability benefit must be reduced by the amount of any workers' compensation payments after the effective date of disability retirement²².

MCERP provided the OIG with an email from MCERP to Risk Management asking if Workers' Compensation benefits had been awarded to employees during a particular time and the response from Risk Management confirming there were no such payments during that time. MCERP also provided the OIG with a list of people awarded service-connected disability payments in FY2016, with indications that none of them received workers' compensation payments between their retirement dates and when they were first paid retirement benefits.

Offset 2: Future Workers' Compensation Benefits are Offset

When a disabled employee who has been receiving workers' compensation benefits then begins receiving disability benefits, the workers' compensation benefits must be reduced.²³

The Director of MCERP and the Chief of Risk Management both advised the OIG that MCERP informs Risk Management of disability approvals as they occur. MCERP also informs Risk Management of people who have received disability benefits but are not recertified, as these people may then resume receiving workers' compensation benefits. MCERP provided an example of a communication informing Risk Management that an employee was awarded disability retirement benefits. Risk Management provided another.

The Chief of Risk Management informed the OIG that Risk Management offsets workers' compensation payments by the amount of disability benefits. The Chief of Risk Management provided written procedures for and examples of offset calculations, based on guidance from the County Attorney. Risk Management also provided the OIG with sample information from an individual file in which workers' compensation payments to a worker who was found to be disabled were offset, based on disability retirement benefits starting.

²¹ Group F (Police) and Group G (Fire and Rescue).

²² County Code § 33-43(d)(11).

²³ County Code § 33-134(c); § 9-610 of the Labor & Employment Article.

Summary of the Chief Administrative Officer's Response

The response from the Montgomery County Chief Administrative Officer (CAO) to the final draft report is included in its entirety in Appendix A.

The CAO's response did not cause us to alter our findings or recommendations.

Appendix A: Chief Administrative Officer's Response



OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

April 9, 2018

TO: Edward L. Blansitt, Inspector General

FROM: Timothy L. Firestine, Chief Administrative Officer *Timothy L. Firestine*

SUBJECT: Response to Confidential Final Draft: Montgomery County Disability Retirement and Long-Term Disability Programs, Report # OIG-18-00x

Since assuming the administration of the County's retirement plans and the long-term disability plan nearly six years ago, Montgomery County Employee Retirement Plans (MCERP) staff have designated the administration of disability related matters a top priority and have spent a considerable amount of time structuring the oversight of the program to ensure compliance with the Montgomery County Code, Internal Revenue Service, and industry best practices.

As outlined in the report's Summary of Results, the OIG confirms that MCERP has made significant progress since acquiring the administration of disability benefits in 2012. The report goes on to outline three findings and three recommendations. Our responses are noted below:

Finding 1: The complexity of the County's disability benefits program makes it costly and burdensome to administer and creates opportunities for errors.

CAO Response: We agree that the County Code which sets forth the basis for the payment of disability benefits, and the ongoing medical evaluations and income offsets, is complex due to the disability benefits being based on the retirement plan, retirement group, and the hire date of each employee who participates. However, we do not concur that the complexity results in opportunities for errors because County Code requirements are clearly addressed in our processes and procedures.

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Maryland Relay 711

Edward L. Blansitt, Inspector General
April 9, 2018
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Recommendation 1: The County should not reach agreements on subjects of labor negotiations for which the costs and the consequences have not been determined.

CAO Response: The OIG refers to two fiscal impact statements created in 2008 and 2010 evaluating amendments to the County Code related to disability benefits, with one stating that the cost impact of the legislation would be significant. The OIG suggests that the estimates be “revisited” to determine if they were accurate.

MCERP’s oversight of County disability benefits began in July 2012, prior to these fiscal impact statements being prepared. Since 2012, MCERP has been involved in the creation of all fiscal impact statements that influence the County’s retirement plans or the long-term disability plan, whether the changes are a result of collective bargaining, updates to the Internal Revenue Code requirements, or other requested modifications.

In addition, the OIG report references a recent amendment for LTD2 increasing the payment of benefits to age 70 and questions the fiscal impact statement reference that there would be no additional cost. In hindsight, we agree that the fiscal impact statement should have read “no significant impact” because the additional medical review for an employee’s benefit continuing beyond age 65 would not significantly impact the cost of the program as we could not envision how a person’s condition would improve materially between ages 65 and 70, and therefore, the request for updated medical would be no more than a letter from the employee’s physician stating that the disabling condition had not changed.

Finding 2: MCERP did not timely conduct 4 of the medical re-evaluations required for the 60 files we tested.

CAO Response: We agree that four out of the 73 (or 5.5%) of the re-certifications that were required to be performed in FY16 were performed between three and nine months after the due date due to an error discovered by MCERP in the Excel spreadsheet that was used to track the date when a disability payee is required to be re-evaluated.

Recommendation 2: MCERP should improve its data and databases to ensure medical re-evaluations are timely.

CAO Response: As the OIG is aware, since June 2017, MCERP has been working with an IT programmer to construct a case management system within PeopleSoft, the system used to track employee participation in the retirement plans and to calculate benefits that would automate the re-evaluation process and eliminate the need to use an Excel spreadsheet to track disability payees still within the re-evaluation period. In addition, the system will create all communication to be used throughout the process, including the letters to the applicant and retiree, memorandums to the Office of the County Attorney and my office, and weekly flags used to note when a person’s re-evaluation is due. We anticipate the system will be operational within the next 60 days.

Edward L. Blansitt, Inspector General
April 9, 2018
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Finding 3: The County could reduce costs by accepting determinations from and adopting parts of the federal Social Security disability process.

CAO Response: As noted in the report, the definition of disability used by the Social Security Administration (SSA) has different medical requirements than the County Code's definition of disability. When we reviewed our most recent notifications from SSA for awards they indicated the following: "end in death or has lasted, or can be expected to last, for a continuous period of at least twelve months." To the best of our knowledge, we have not received any notifications from the SSA for the definition in the OIG report: "the person is disabled according to the above Social Security definition and medical improvement is not expected."

As the OIG has noted in the report, the County Code disability related regulations are quite complex. Approximately 13% of the retirees receiving service connected disability benefits who have not yet met their normal retirement date are also receiving Social Security disability benefits. If we were to use the receipt of social security disability benefits as the support for meeting the re-certification requirements within the County Code for the 13% of individuals receiving the Social Security disability benefits, we would need to segregate this group in our PeopleSoft Pension System and have them "coded" differently than others receiving benefits. This is an enhancement that we would consider in the future when we undertake other upgrades to our System.

Recommendation 3: Require all applicants to apply for social security disability.

CAO Response: Retirement benefits are the subject of collective bargaining as evident in the numerous changes made to the retirement provisions in the County Code over the last twenty years. The County will continue to discuss changes to the retirement provisions as part of the bargaining process in the future.

c: Fariba Kassiri, Assistant Chief Administrative Officer
Linda Herman, Executive Director, Montgomery County Employee Retirement Plans
Marc Hansen, County Attorney, Office of the County Attorney
Shawn Y. Stokes, Director, Office of Human Resources

Appendix B: Objectives, Scope, and Methodology

The objectives of this review were to determine whether, for Fiscal Year 2016:

- All required approvals were performed in accordance with legal requirements, policies, and procedures,
- Applicable checklists were completed for each disability benefit applicant,
- Evidence of required medical examinations of disability applicants was on file,
- Evidence of required medical re-evaluations for current disability recipients was on file,
- Control procedures were implemented to determine if a retiree was receiving other income, and
- Disability benefits were reduced by workers' compensation benefits and vice versa where appropriate.

The scope of our review includes applicants for and recipients of County disability benefits in fiscal year 2016.

We reviewed laws, policies, and procedures. We gathered data on applicants and people who received benefits in FY 2016. We interviewed County employees and tested disability benefit internal controls.

Medical Re-Evaluation Testing Methodology:

To test whether medical re-evaluations were done, the OIG combined the ERS data (1175 records) and the LTD2 data (58 records). The combined file contained 1233 records. We randomly selected 60 records to test. We did not include people who had aged out or were noted to be survivors or receiving money under a Qualified Domestic Restraining Order in our sample. A Disability Manager assisted during the review of the individual files. There were 509 payees left.

After the OIG identified 12 disability recipients who had not received medical re-evaluations within the last one or three years, depending on the relevant requirements, the Executive Director informed that OIG that eight of these had been re-evaluated timely, using a different methodology than the OIG used.

Income Review Testing Methodology:

For the income reviews, we first reviewed the income records for the 60 benefit recipients for whom we had reviewed medical evaluation records. This list included 21 people who did not require income reviews, due to age, even though they did require medical reviews. We checked files for additional randomly-chosen benefit recipients, until we reached a total of 60 recipients.

Appendix C: Requirements for Disability Retirement and Long-Term Disability²⁴

The Director of MCERP summarizes the requirements as follows:

Under the County Code for ERS, a person qualifies for a NSCD Retirement if they are mentally or physically incapacitated from performing the duties of the position they held at the time the disability occurred, unable to productively perform the duties of another available position for which he or she is qualified as the result of an illness or injury that is not job related or due to their willful negligence, the illness or injury was incurred after they became a member of the Plan, they have an incapacity that is likely to be permanent, and they have five years of credited service. A person qualifies for a Partial SCD Retirement if they are partially incapacitated from performing the duties of the position they held at the time the disability occurred, or a position of comparable status within the same department, the incapacity is job-related and not due to the member's willful negligence, and the incapacity is unlikely to resolve in the next 12 months or may be permanent. A person qualifies for a Total SCD Retirement if they are totally incapacitated from performing the duties of the position they held at the time the disability occurred, or a position of comparable status within the same department, the incapacity is job-related and not due to the member's willful negligence, and the incapacity is unlikely to resolve in the next 12 months or may be permanent.

Under the County Code for LTD₂, a person qualifies for initial disability if they are incapable of performing the job they held when they became disabled. A person qualifies for NSCD if their condition is due to an accident, illness, or illness that is not the natural and proximate result of performing their duties as an employee, and they have worked for the County for the 6 months immediately preceding the disability. A person qualifies for a Partial SCD, if they are considered unable to perform one or more of the essential functions of the job they held when they became disabled, but they may still perform other substantial gainful employment. A person qualifies for a Total SCD, if the Disability Review Panel determines that the disability meets the Social Security Administration's requirements for disability. In order to be determined to be disabled by the Social Security Administration, they must be unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that can be expected to end in death, or last for at least 12 months.

Under the County Code for LTD₂, a person qualifies for continued disability if they cannot perform any job commensurate with their education, training or retraining, and experience; and their condition is likely to be permanent.

²⁴ While we believe that this is a reasonable representation, readers should not rely on this as anything more than a summary and should consult the County Code for appropriate guidance.

Appendix D: Definitions of Disability²⁵

The Director of MCERP summarizes the definitions of disability as follows:

Definitions of Disability

ERS	<p>A person is disabled in the ERS if:</p> <ul style="list-style-type: none"> • NSCD - If they are mentally or physically incapacitated from performing the duties of the position they held at the time the disability occurred, unable to productively perform the duties of another available position for which he or she is qualified as the result of an illness or injury that is not job-related or due to their willful negligence, the illness or injury was incurred after they became a member of the Plan, they have an incapacity that is likely to be permanent, and they have five years of credited service. • Partial SCD - If they are partially incapacitated from performing the duties of the position they held at the time the disability occurred, or a position of comparable status within the same department, the incapacity is job-related and not due to the member's willful negligence, and the incapacity is unlikely to resolve in the next 12 months or may be permanent. • Total SCD – If they are totally incapacitated from performing the duties of the position they held at the time the disability occurred, or a position of comparable status within the same department, the incapacity is job-related and not due to the member's willful negligence, and the incapacity is unlikely to resolve in the next 12 months or may be permanent
LTD ₂	<p>A person qualifies for initial disability in the LTD₂ plan if:</p> <ul style="list-style-type: none"> • NSCD - If their condition is due to an accident or illness that is not the natural and proximate result of performing (to be continued)

²⁵ While we believe that this is a reasonable representation, readers should not rely on this as anything more than a summary and should consult the County Code for appropriate guidance.

<p>LTD₂</p>	<p>(continued)</p> <p>their duties as an employee, and they have worked for the County for the 6 months immediately preceding the disability.</p> <ul style="list-style-type: none"> • Partial SCD – If they are considered unable to perform one or more of the essential functions of the job they held when they became disabled, but they may still perform other substantial gainful employment. • Total SCD - If the Disability Review Panel determines that the disability meets Social Security’s requirements for disability. To be determined disabled by Social Security, they must be unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that can be expected to end in death, or last for at least 12 months. <p>A person qualifies for continued disability if they cannot perform any job commensurate with their education, training or retraining, and experience; and their condition is likely to be permanent.</p>
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