

PUBLIC SAFETY OFFICERS BENEFIT ACT
Act 46 of 2004
Michigan Disability Benefit Program

APPLICATION INSTRUCTIONS

Before completing the application, please carefully read the eligibility requirements, which are detailed in the Public Act and Administrative Rules excerpted after these instructions. If you believe that your case complies with the eligibility requirements, please read the following instructions before completing and submitting the application. Incomplete applications will be returned to the applicant.

Important, please note! If the permanently and totally disabled public safety officer requires 24 hour custodial care in the home, a residential facility, or a hospital with no reasonable likelihood of recovery as can be documented by not fewer than two physicians familiar with the officer's case, it may not be necessary to submit all of the supporting documentation detailed below.

If this is the case, please call the Michigan Commission on Law Enforcement Standards for further instructions before proceeding with the application process.

Application Procedures and Requirements

All of the following documentation must be included with the completed application. Incomplete applications will be returned to the applicant. Provide original reports or a certified copy of original reports. A copy should be certified as a true and exact copy by the official custodian of the record or other public official authorized to certify the copy (R 28.14955).

Sufficient evidence must be produced to show that the public safety officer suffered a permanent and total disability as the direct and proximate result of a catastrophic injury sustained in the line of duty. All line of duty injuries that result in a disability retirement are not necessarily covered under the PSOB program. The injury has to prevent the public safety officer from performing any substantial and gainful work.

- **Application for Public Safety Officer's Permanent and Total Disability:** The application must be completed and signed by the disabled officer. In the event that the disabled officer is unable to complete and sign the application, the officer's spouse or legally designated representative has the authority to do this on the officer's behalf. The application must also be signed by all potential beneficiaries 17 years of age and older and, if applicable, by the legally designated personal representative.

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➤ **Benefits Provider Information:** A letter or affidavit from the agency's benefits provider stating that the disabled officer is receiving the maximum allowable disability compensation for public safety officers in the agency and that the officer is permanently and completely separated from the employing public safety agency as a direct result of an injury in the line of duty. This must be on the provider's letterhead and signed by an authorized official. The benefits provider may be a retirement fund or a government workers' compensation office. Please note that, for purposes of the Michigan PSOB Disability Program, Social Security does not qualify as a benefit provider even though the officer may be receiving funds from that source.

➤ **Medical Documentation:** Medical documentation must include admission and discharge summaries from each medical facility in which the officer was treated for each of the injuries, as well as a final medical diagnosis. The medical materials submitted by the disabled officer's physician(s) should also address the following questions:

1. What is the nature of the patient's injuries?
2. What physical and/or mental disabilities resulted from the incidents?
3. What, if any, is the patient's history of physical or mental pre-existing conditions?
4. What types of treatments, including medical rehabilitative treatments, have been implemented for the patient's line-of-duty injuries, and what is their current status?
5. At what stage is the patient in the healing process?
6. What is the patient's current level of ambulatory skills? Are assistive devices required?
7. What is the patient's current daily living capacity, including eating, bathing, toileting, and dressing?
8. What is the patient's prognosis, and what is the basis for this medical decision? Please include medical evaluations for the past six months.
9. What is the patient's residual functional capacity or level of disability?
10. In the disabled officer's physician's (physicians') opinion, what is the likelihood of the patient performing any type of gainful employment at any time in the future?

1. **Claimant Statement:** A brief statement signed by the permanently and totally disabled officer or the permanently and totally disabled officer's representative must also be submitted, addressing the following questions:

1. What is the highest educational level the disabled officer achieved? Has the disabled officer completed any special training or courses, including military training?
2. Has the permanently and totally disabled officer received any formal vocational evaluations or vocational rehabilitative treatment? If so, what is their current status?
3. Detail all personal employment since the personal injury that caused the disability. See Section D of the application for instructions on what information to include.

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Please note: The Michigan Commission on Law Enforcement Standards will request the following information from the former employer.

- **Circumstances of Injuries:** A statement signed by the head of the former employing agency, on agency letterhead, including the officer's name and title, when and where the incidents occurred, what initiated them, and the nature of the injuries. This statement must also indicate the date on which the officer was medically retired from the agency. Further, the letter must also contain the following information:
 - Verify that the officer was employed by the agency and on duty on the date of the reported injury.
 - Provide a description of the officer's job, job title, and assignment on the date of the reported injury.
 - Provide a description of the injury that occurred while working for the agency on the date of the reported injury.
 - Verify that the officer was disabled in the line of duty while performing an action for which this officer was authorized to perform by rule, regulation, condition of employment or service, or law.

The statement must also verify that each of the following is true. If any of the following are not true, a description and supporting documentation must be provided.

- Verify that the personal injury that resulted in the permanent and total disability was not caused by the intentional misconduct of the officer or by his or her intent to bring about the injury.
 - Verify that the officer was not voluntarily intoxicated at the time of the personal injury.
 - Verify that the officer was not performing his or her duties in a grossly negligent manner at the time of the personal injury.
 - Verify that the injury was not the direct and proximate result of the actions of an individual to whom payment would be made under the Act.
- **Agency Investigation Reports:** These reports should contain information relevant to each incident and injury that contributed to the officer's permanent and total disability. If these reports are unavailable, a statement to that effect must be signed and submitted by the head of the former employing agency.
 - **Official Toxicology Reports:** If available, these reports must be signed by the official who performed the toxicology analysis immediately following each injury. If a toxicology analysis is not available, a statement to that effect must be signed and submitted by the head of the former employing agency.

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CASE PROCESSING CONSIDERATIONS

Essential Michigan Considerations When Considering a Claim:

- Is the catastrophic personal injury within the timeframes of the Michigan Public Safety Officers Benefit Act (October 1, 2003 to date)?
- Did the catastrophic personal injury occur in the line of duty?
- Is the disability a direct and proximate result of the catastrophic personal injury?
- Is the disability permanent and total?
- Does the permanent and total disability prevent the officer from performing gainful work?

Questions and Answers

Question: My line-of-duty injury occurred in 2003, but I was not medically retired until 2005. Can I apply for the disability benefit?

Answer: PSOB's Disability Program was enacted on April 1, 2004 and was made retroactive to October 1, 2003. The line-of-duty injury had to occur on or after the effective date. Eligibility is determined by the date you were injured, not the date you were medically retired.

Question: If I meet the requirements of the prerequisite disability certification, does that mean I will receive the disability benefit?

Answer: No. Meeting the requirements of the prerequisite disability certification only enables you to initiate a claim.

Question: I was on duty and hurt my back. My doctor says I am permanently and totally disabled. Do I now qualify for the benefit?

Answer: Your doctor's evaluation is very important to our medical consultant when he or she conducts a record review, but it is not the deciding factor as to whether you will be awarded the disability benefit.

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Review Process

Review by the Commission

In addition to the evidence submitted, the commission shall consider at least all of the following factors in determining whether the officer intended to bring about the officer's injury.

- Whether the permanent and total disability was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death or injury.
- Whether the officer had a prior history of attempted suicide or attempts to cause physical incapacitation.
- Whether the officer's intent to bring about his or her death or injury was a substantial factor in the officer's permanent and total disability.
- The existence of an intervening force or action which would have independently caused the officer's permanent and total disability and which would not otherwise prohibit payment of a benefit under the Act.

Review of Claim Documentation by the Commission's Medical Consultant

When all documentation has been received, the relevant records will be forwarded to the Commission's medical consultant. The consultant will review the claimant's records and submit a written report identifying whether the claimant is permanently and totally disabled in compliance with the requirements of the Public Safety Officers Benefit Act (2004 PA 46).

Review of Determination by the Commission's Legal Counsel

The staff will prepare a determination based on the medical consultant's findings and other requisite information. The determination will be reviewed by the Commission's legal counsel to ensure that all legal requirements of the Act have been met.

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Disability Provisions in Public Act 46 of 2004

MCL 28.634(d) Disability of a public safety officer; benefit; amount (excerpt).

If a public safety officer is permanently and totally disabled as the direct and proximate result of a catastrophic personal injury sustained in the line of duty, the state shall pay a benefit of \$25,000.00 to the spouse, but if there is no spouse, to the dependents, and if there are no dependents, then to the entity providing care to the permanently and totally disabled public safety officer.

MCL 28.632 Definitions.

“**Public safety officer**” means any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, firefighter, rescue squad member, or ambulance crew member.

“**Firefighter**” means a regularly employed member of a fire department of a city, county, township, village, state university, or community college or a member of the department of natural resources who is employed to fight fires. Firefighter includes a volunteer member of a fire department.

“**Law enforcement officer**” means an individual involved in crime and juvenile delinquency control or reduction or enforcement of the criminal law. Law enforcement officer includes police, corrections, probation, parole, bailiffs, or other similar court officers.

“**Member of a rescue squad or ambulance crew**” means an officially recognized or designated employee or volunteer member of a rescue squad or ambulance crew.

“**Permanent and total disability**” means medically determinable consequences of a catastrophic, line-of-duty injury that permanently prevent a former public safety officer from performing any gainful work.

“**Direct and proximate**” means that the antecedent event is a substantial factor in the result.

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“Line of duty” means either of the following:

- (i) Any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he or she serves. For other officers, line of duty means any action the officer is so obligated or authorized to perform in the course or controlling or reducing crime, enforcing the criminal law, or suppressing fires.
- (ii) Any action which an officially recognized or designated public employee member of a rescue squad or ambulance crew is obligated or authorized by rule, regulation, condition of employment or service, or law to perform.

MCL 28.636 Benefit payment; prohibitions.

A benefit payment shall not be made under this act if any of the following apply:

- (a) The personal injury that resulted in death or permanent and total disability was caused by the intentional misconduct of the public safety officer or by his or her intent to bring about the injury.
- (b) The public safety officer was voluntarily intoxicated at the time the personal injury occurred.
- (c) The public safety officer was performing his or her duties in a grossly negligent manner at the time the personal injury occurred.
- (d) The injury was the direct and proximate result of the actions of an individual to whom payment would be made under this Act.

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Disability Provisions in Administrative Rules

R 28.14951 Definitions in Administrative Law

"Personal injury" or **"injury"** means any traumatic injury, as well as diseases which are caused by or result from such an injury, heart attack, or stroke, but not an occupational disease.

"Catastrophic injury" means consequences of an injury that permanently prevent an individual from performing any gainful work.

"Gainful work" means work activity that is both substantial work activity and gainful work activity.

"Gainful work activity" means work activity that is done for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized or pay is received.

"Occupational disease" means a disease which routinely constitutes a special hazard in, or is commonly regarded as, a concomitant of the officer's occupation.

"Substantial work activity" means work activity that involves doing significant physical or mental activities. Work may be substantial even if it is done on a part-time basis or if the public safety officer does less, gets paid less, or has less responsibility than when he or she was a member of the former employing public safety agency.

"Traumatic injury" means a wound or a condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

R 28.14952 Filing Deadline and Prerequisite Disability Certification

A claim by a permanently and totally disabled public safety officer or on behalf of a survivor of a deceased public safety officer shall be filed within 1 year after the date of death or prerequisite disability certification, unless the time for filing is extended by the executive director for good cause. A prerequisite certification means either of the following: (1) The employing agency's official, certified award to the claimant public safety officer of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury in the line of duty; or (2) If the employing agency does not itself make such disability awards, then an official certified award to the claimant public safety officer by the cognizant judicial, political, or administrative agency or body of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury sustained in the line of duty.

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R 28.14955 Evidence.

A claimant for a benefit under the act shall submit evidence of eligibility or other material facts as specified in these rules. The commission may require at any time additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

If a claimant for a benefit under the act and these rules has not submitted evidence or has submitted insufficient evidence of any material issue or fact, then the commission shall inform the claimant what evidence is necessary for a determination and shall request the claimant to submit evidence within a specified reasonable amount of time. The claimant's failure to submit evidence on a material issue or fact as requested by the commission shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit.

If a copy of a record, document, or other evidence, or an excerpt of information, is acceptable as evidence in lieu of the original, then the copy or excerpt shall be certified as a true and exact copy or excerpt by the official custodian of the record, or other public official authorized to certify the copy.

R. 28.14956 Findings of state, local, and federal agencies; determination.

The commission shall give substantial weight to the evidence and findings of fact from state, local, and federal administrative and investigative agencies. The commission shall request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the commission with a rational basis for a decision on a material element of eligibility.

If an investigation of a claim does not result in a conclusive eligibility determination, then the commission may wait for and rely upon the eligibility determination of the United States department of justice on the claimant's federal application under 42 U.S.C. § 3796 and 28 C.F.R. § 32.1 to §32.24

R 28.14966 Payment of benefits; limitations.

As provided in the act, payment of benefits is subject to appropriation by the legislature of money necessary to make the payment. Claims for benefits shall be paid in the order in which the commission determines the eligibility of the claims. If the number of eligible claims exceeds the appropriated funds, then the unpaid eligible claims shall be paid when funds are appropriated by the legislature.