ANHOPS

ASSOCIATION OF NATIONAL HEALTH OCCUPATIONAL PHYSICIANS

GUIDELINES ON ILL HEALTH RETIREMENT

ANHOPS GUIDELINES

Title: **Guidelines on Ill Health Retirement incorporating:**

(i) Incapacity due to Ill Health
(ii) Eligibility for Ill Health Retirement Benefits
(iii) Eligibility for other benefits

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Guideline Co-Ordinators: **Dr. P. G. Verow Dr. A. Robertson Dr M. Newson-Smith**

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This document has been approved by the ANHOPS Executive Committee. The information is intended to act as a guideline only as any local Occupational Health practice should be determined by someone with adequate training and experience of Occupational Health within the NHS.

Acknowledgement:

1.Section 8. of these guidelines incorporates aspects of a document produced by a Working Group of the Association of Local Authority Medical Advisors "Ill Health Retirement -Guidelines for Occupational Physicians" Poole CJM, Baron CE, Gunneyon WJ, OHanlon M, Raoof A, Robson SA, Turner PEM. Occupational Medicine, Vol.46 No.6, 402-406 1996

2. The guidelines have been compiled in conjunction with the NHS Pensions Agency and the Pensions Division of MIS. Ltd.

CONTENTS

1. AIM OF GUIDANCE

To help Occupational Health Physicians to give consistent advice in respect of incapacity due to ill health and eligibility for NHS Pension Scheme benefits.

2. OBJECTIVES OF GUIDANCE

2.1 To clarify the role of the Occupational Health Professional in the process of Ill Health Retirement.

2.2. To clarify the role of the Pensions Agency in respect of applications for Ill Health Retirement Benefits.

2.3 To give guidance on some medical problems and their likely implications in respect of Ill Health Retirement.

3. BACKGROUND

The term 'Ill Health Retirement" can be confusing, as it frequently requires the Occupational Physician to consider three separate processes:

(i) To advise managers about the individual's capability to render regular and efficient service, in their current post or a modified or alternative post.

and if appropriate

(ii) To determine whether the individual would meet the Pension Scheme criteria for eligibility for Ill Health Retirement Benefits i.e. permanently incapable of carrying out the duties of their employment.

(iii) To establish whether the individual is eligible to be considered for other benefits, such as NHS Injury Benefits.

4. ROLES AND RESPONSIBILITIES

4.1 Role of Occupational Health in the management of Ill Health Retirement

To provide an impartial advisory service on any health related matter which is affecting work.

To advise managers about the fitness of employee's to undertake work activities following sickness absence and at other times where health issues may be involved.

To advise managers and employees on an employees fitness to undertake modified or alternative duties.

Where appropriate, to assist employees with the process of application for the early payment of Pension Scheme benefits owing to ill health. This may include the need to obtain additional medical information in order to support an application.

To complete Pension Scheme forms prior to submission to the NHS Pensions Agency.

4.2 Role of Managers in the management of Ill Health Retirement

To keep accurate records relating to sickness absence. These should include dates and reasons (where known) of absences.

To advise Occupational Health where it is believed that health related matters may be affecting work, and to identify which specific duties are causing problems.

To advise Occupational Health where it is believed that work is causing illness or making it worse.

To identify, where appropriate, whether modified or alternative duties are available.

To assist with the rehabilitation of individuals back to work.

To determine whether termination of employment is appropriate and on what grounds the contract should be terminated.

To decide on entitlement to Temporary Injury Allowance and to consult the Scheme's Administrators for advice on complex claims (eg Stress, and where no accident reports have been completed.)

4.3 Role of Pensions Agency in applications for Ill Health Retirement benefits

To determine if applications meet the statutory criteria for Ill Health Retirement Benefits **(IHRB)**

To determine if an applicant meets the statutory criteria for Permanent Injury Benefits **(PIB)**

To ensure the conclusions detailed in medical reports for IHRB and PIB are substantiated by the medical reports.

To ensure that the applicant has been appropriately investigated and that all reasonable treatment options have been unsuccessfully tried before concluding that they are permanently incapable of efficiently discharging the duties of their employment.

To co-ordinate the gathering of medical information additional to that contained in the IHRB application form for the purposes of assessing an IHRB claim.

To advise the individual concerned and the Employer of the progress and outcome of the application within an agreed time-scale.

To adjudicate on entitlement to Temporary Injury Allowance, when asked.

5. PROCESS

5.1 Applications for Ill Health Retirement Benefits

The NHS Pensions Agency will consider applications for Ill Health Retirement Benefits from Occupational Health Physicians, General Practitioners and other specialists, however it is preferable that the Occupational Health Physician either completes the form or provides additional information. The Occupational Health Physician should be aware of all applications for Ill Health Retirement within their organisations, however in some circumstances it may be appropriate for others to complete the Ill Health Retirement application forms. The applicant should have access to an individual within the organisation who can give guidance and quotations as to their likely pension benefits. This individual would be responsible for ensuring that the applicant's manager has completed the relevant part of the form (AW33E) and included a copy of the job description. The form would then be completed by the applicant who would take/send it to the relevant medical officer for completion and onward transmission to the Pensions Agency in the envelope provided.

5.2 Assessment of capability

Concerns or issues of capability may arise at any time during employment. Some guidance on this assessment process may be found within the ANHOPS Guideline “Fitness to work in the NHS".

6.0 Eligibility for Benefits

6.1 Eligibility for Ill Health Retirement Benefits

An application form (AW33E) should be submitted to the Pensions Agency who will determine whether the statutory criteria have been met. These will require that the applicant is not only permanently incapable of rendering efficient and regular employment within their current job but that their employment has been/will be terminated on the grounds of ill-health. Within this statutory framework the following definitions are appropriate:

(i) Permanently - until the Scheme's normal retirement age, i.e. 60 yrs. old.
(ii) Efficiently - producing the result required competently;
(iii) Regular employment - to effectively fulfil the agreed number of contracted hours.
(iv) The level of proof of permanency is 'beyond reasonable doubt".

The NHS Pensions Agency will make the final decision as to whether an application for Ill Health Retirement Benefits is appropriate, and have established an Appeal system to cater for individuals not satisfied with the outcome of their application.

6.2 Eligibility for Preserved Benefits

Where an employee has already left the NHS for reasons other than ill health, they may be eligible for the early payment of their preserved benefits, if they subsequently become permanently incapable of working in any capacity. The individual should obtain and return the relevant form, AW240 from the Pensions Agency. Where an additional medical assessment is requested, an appropriate fee would be offered by the Pensions Agency.

This provision is designed to cover people who have resigned, taken up work elsewhere or simply left NHS employment. It is therefore most unlikely that Occupational Health will have a direct role to play in this type of application.

7.0. Eligibility for other benefits

7.1 NHS Injury Benefit

This scheme provides benefits for any NHS employee who, as a result of injury, disease or condition caused by the duties of their NHS employment;

(a) is on certificated sick leave with reduced pay or no pay, or
(b) have their earning ability permanently reduced by 11 % or more or
(c) dies leaving a spouse and/or dependants

- There are three types of Injury Benefit – “Temporary Injury Allowance (TIA)", 'Permanent Injury Allowance (PIB)" and "Dependant's Allowance" (following death)

- The Injury Benefits Scheme is quite separate from the NHS Pension Scheme, however, an employee does not have to be in the NHS Pension Scheme in order to be considered for Injury Benefits.

- There are two main tests for Injury Benefits:

  - Is the condition "wholly or mainly attributable" to NHS employment
  - Has, or will, the condition result in a loss of earnings (TIA) or a permanent reduction in earning ability (PIB)

- The level of proof required to determine if a loss of earnings (ability) is attributable to an injury is "on the balance of probability".

7.2 Temporary Injury Allowance (TIA)

- This applies where an employee is on certificated sick leave with reduced pay or no pay because of an injury, disease or condition that is wholly or mainly attributable to their NHS duties.
- Temporary Injury Allowance is paid by the employer and is designed to top up the income to *85%* of the average pay after taking into account salary and certain Social Security Benefits. When an employee returns to work or leaves their employment, the allowance stops.
- In general the employer decides whether TIA is appropriate i.e. whether the injury or the condition qualifies for the allowance.
- In cases where there is doubt or a conflict of opinion then advice should be sought from the Pensions Agency. An Occupational Physician may also be able to give some guidance.
- The Pensions Agency should always be consulted on stress related TIA claims or cases of disease.

7.3 Permanent Injury Benefits (PIB)

- If the injury or disease sustained reduces the earning ability by 11% then the individual may be entitled to Permanent Injury Allowance. The calculation of the guaranteed income is based upon the total length of NHS employment and the reduction in earning ability. The amount of guaranteed income can occasionally be up to *85%* of the previous salary, and is paid by the employer.

- In theory this allowance can also be payable whilst still in employment if the earnings have been significantly reduced. This could be because of re-grading or reduction in hours. The decision about whether the injury will qualify for an allowance is only made after the employee has had their salary reduced or stopped. In practice this means that the employee will not be able to know whether they will or will not qualify until such time as they actually have had their pay reduced or come out of employment. As these cases will be PIB cases then any benefit will be based on the permanent loss of earning ability, taking into account the continuing earning capability in the general field of employment, not only in the position held by the employee.

7.4 Industrial Injury Benefit

- This is payable by the Benefits Agency if an employee has sustained either an injury or disease which has caused disability. The specific work-related diseases need to be on the prescribed list. Typical diseases would be conditions such as occupational asthma (D7) caused by glutaraldehyde, ispaghula or antibiotics (specifically listed) or other sensitising agents e.g. latex, methyl methacrylate etc. (not specifically listed). Other diseases would include tuberculosis, hepatitis, problems from ionising radiation, noise etc.

- The individual does not need to have suffered any loss of income in order to qualify, they can still be in employment and there is no requirement for proof of negligence (no fault compensation).

- The employee should be advised to go to the Benefits Agency (old DSS) and request the appropriate form. There are a number of instruction leaflets available which provide advice on how to claim for specific work-related diseases.

- This benefit is independent of those benefits already outlined.

8.0 Guidance on Specific Medical Conditions

8.1 Psychiatric Disorders

8.1.2 Psychological/Anxiety Disorders (neuroses)

These include adjustment disorders ,generalised anxiety, phobias, social disorders, panic attacks, post-traumatic stress, dissociative (conversion) states and somatoform disorders. Over *50%* of these disorders (especially acute reactions to stress and adjustment disorders) have a very good prognosis and are helped by counselling. The others usually improve with cognitive-behavioural therapy or high dose antidepressant treatment[1] In most cases

Ill Health Retirement is inappropriate unless specialist psychiatric treatment and job modification have been unsuccessful and there are features of their illness associated with a poor prognosis. For post-traumatic stress disorder a sense of helplessness during the disaster or bereavement as a result of the disaster are associated with the worst prognosis.[2] Treatment by a Clinical Psychologist is usually helpful for these people and should have taken place before the question of retirement is considered.

8.1.3 Obsessive-compulsive Disorder

The majority of people suffering from obsessive compulsive disorder (66%) improve by the end of a year with cognitive-behavioural therapy and high dose serotonin receptor specific antidepressants. The prognosis is worse for those with severe symptoms, coexistence of other mental illness, personality disorder or continuing stressful events in their life.[1] Termination of employment owing to ill health is appropriate if the applicant has severe symptoms which have not been controlled by the above treatment.

8.1.4 Stress

Feelings of an inability to cope with the pressures of work is unlikely to be accepted for early payment of pension benefits, unless they are associated with mental ill health which has been unresponsive to specialist psychiatric treatment. Occupational Physicians may need to advise management about relevant factors in the workplace such as an excessive workload or poor interpersonal relationships.

There is no provision within the NHS Injury Benefit Scheme's Regulations to award benefits if the individual is unable to cope with the normal demands of their chosen occupation.

8.1.5 Eating Disorders

Most patients with anorexia nervosa return to normal weight and, in women, menstruation. However, in some patients, eating habits remain abnormal and they become overweight or develop bulimia.[1] The poorest prognosis is associated with a late onset of illness, hostility of the family towards the patient, a neurotic or personality disorder and a long duration of illness [3].+[4]

Employment within the healthcare environment[5], where there are responsibilities for the care of patients or children would be inappropriate whilst an individual is suffering from an eating disorder, particularly if there is evidence of a personality disorder with paranoid,

schizoid, emotionally unstable or psychopathic features. Employees with an eating disorder should be able to return to work unless they have failed to respond to psychiatric treatment, or they have a personality disorder which prevents them from safely undertaking their job. In these cases applications for Ill Health Retirement Benefits may be appropriate.

8.1.6 Depression

The majority (80%) of patients with depression recover within two years of the onset of clinical illness[1]. It is unlikely that a decision with regard to permanent incapability could be made until a full trial of anti-depressants have been tried over a period of 18 months to 2 years. In 99% of cases reactive depression will respond to a combination of counselling and antidepressant treatment, so Ill Health Retirement in these circumstances should be unusual. It is unlikely that employing authorities will be prepared to wait for a period of 18 months prior to making a decision on employment and therefore their employment may have been terminated prior to a decision regarding pension benefits has been made. In such cases the applicant can be advised that it may be possible to backdate the Ill Health Retirement Benefit to the date of termination of employment.

8.1.7 Bipolar Affective Disorder (Manic-depressive Psychosis)

Relapse is less likely on lithium therapy. Twenty to thirty per cent of patients have three or four episodes of mania per year. Those with the poorest prognosis usually have psychotic features with their manic episodes, a rapidly cycling form or a personality disorder.[1]+[6] Termination of employment owing to ill health may be appropriate in these circumstances.

8.1.8 Chronic Fatigue Syndrome

There have been a few longitudinal studies published recently of patients with chronic fatigue or chronic fatigue syndrome. Although follow-up has been for no longer than four years, 60-70% of patients have made a good functional recovery. In two studies, 66-70% of patients improved sufficiently to be able to return to their work or courses and functional impairment fell significantly with increasing length of follow-up. A belief that an undiagnosed physical illness explained all the patients' symptoms, or a primary psychiatric diagnosis, were associated with a poor prognosis[7-9]

A cognitive-behavioural approach to management of the illness is recommended[9,11]
Dysfunctional thoughts should be addressed and a programme of graded activities with the objective of returning to normal functioning arranged, rather than periods of prolonged inactivity. Psychiatric referral should be considered for those who fail to respond to rehabilitation or for those with psychiatric symptoms. The possibility of co-existing mental ill health should be approached in a non-confrontational manner as some patients with this illness will be resistant to psychiatric referral. The criteria for Ill Health Retirement Benefits are unlikely to be fulfilled unless all reasonable treatment options have been tried, by which time many employers may have terminated employment.

Chronic Fatigue Syndrome claims will be considered under the NHS Injury Benefit Scheme following retirement. However very strong evidence that the condition was contracted during their NHS duties would be required.

8.1.9 Alcohol Abuse

The applicant should have had at least one trial in a rehabilitation programme. Outcome appears to be independent of the type of programme and the majority manage to reduce or abstain from alcohol consumption.' Termination of employment owing to ill health would be appropriate if there is evidence of end-organ damage such as cirrhosis, neuropathy, organic brain damage (confirmed by psychological testing), or if there is co-existing major mental illness unresponsive to treatment.

8.1.10 Schizophrenia

Only about 20% of patients in this country have a complete remission from symptoms'.[2] When this does occur it is usually within the first two years of the onset of the illness. Factors associated with a poor prognosis are an insidious onset, a long episode of illness, a previous psychiatric history, negative symptoms, young age of onset, not being married, poor psychosexual adjustment, an abnormal previous personality, social isolation, poor compliance with treatment and a poor work record.[1] It is likely that it will take a minimum of between 18-24 months for all reasonable treatment options to be considered and therefore a decision to be made in respect of permanency of the problem.

8.2 Musculo-skeletal

8.2.1 Back pain

With correct management, most people with acute back pain recover within a few weeks. In the absence of neurological symptoms and signs, early mobilisation accompanied by adequate pain relief and a return to work, is now recommended in preference to prolonged bed rest or inactivity. For those patients with chronic or severe mechanical back pain, chiropractic treatment has been shown to result in better outcome measures than conventional hospital outpatient management. Strategies which address negative beliefs by the patient, such as work being detrimental to their backs, whilst at the same-time promoting a positive attitude towards controlling back pain have also been recommended. Patients with back pain and mental ill health, prolonged sickness absence, poor job satisfaction or who are pursuing compensation are associated with the worst prognosis.[16]

The presence of degenerative changes on x-ray in keeping with the applicant's age, or disk bulges and protrusions (but not prolapses) are equally prevalent in people without back pain [17,18] and therefore may not warrant termination of employment owing to ill health. It would, however, be appropriate if investigations (to include x-rays, a CT or MRI scan) have shown a significant and relevant lesion which has been unresponsive to treatment and the individual is involved in regular manual handling tasks.

8.3 General Medical

8.3.1 Diabetes

Diabetes mellitus should not be a bar to most jobs. Shift work is possible for those requiring treatment with insulin, without compromise to glycaemic control, provided that the timing of therapy is flexible.[19] Only those who started treatment with insulin after 1 April 1991 are barred in law from holding a group 2 licence.[20] This may change with the introduction of future European standards for driving. Termination of employment owing to ill health should be considered[20] if the applicant has organ damage such as severe visual impairment, nephropathy or arteriopathy for which treatment has been unsuccessful and job modification or adaptive technology is inappropriate.

8.3.2 Cardiovascular Disease

For employees with angina or who have had a myocardial infarction, an exercise stress test may be good for the patients morale, it will give an objective guide to exercise tolerance and help to distinguish physical from psychological disability. It is essential after a myocardial infarction if group 2 driving is being considered. [21] Rehabilitation clinics help employees to assess their exercise tolerance and to regain their confidence before returning to work. Because of the wide range of therapeutic options now available to treat hypertension, termination of employment owing to ill health is unlikely to be justifiable unless the hypertension is associated with significant organ damage or it is truly resistant to therapy.

There is no medical reason why someone who has had a successful heart transplant or a coronary bypass cannot return to their job. The holding of a group I driving licence and even heavy manual work is permissible. Published studies have shown that the majority of patients who were in work six months prior to their transplant return to their jobs. Some centres have succeeded in getting more patients back to work by adopting a policy of not supporting a patient's claim for medical disability in the absence of an absolute medical indication. Eligibility for Ill Health Retirement Benefits is only likely to be appropriate where the transplant has been unsuccessful or the applicants job necessitates the holding a of a group 2 driving licence, or where all practical attempts at redeployment or return to work have proved unsuccessful. Unfortunately, waiting lists for this type of intervention can be extremely long and it is likely that most employers will wish to make employment decisions before the success of such intervention can be assessed.

8.4 Neurological

8.4.1 Epilepsy

This would be unlikely to be accepted, except where fits have continued despite a trial of the full range of available treatments, and that the ongoing fits present a significant risk to the individual himself to colleagues or to patients.

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