

# NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS BENEFIT FUNDS

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Paul Capurso  
Michael P. Cavanaugh  
Graham McHugh  
Michael Rodin  
John Sheehy

David Stewart  
Executive Director

395 Hudson Street  
New York, NY 10014  
Telephone: (212) 366-7300  
Fax: (212) 366-7444

**MANAGEMENT  
TRUSTEES**  
David T. Meberg  
Co-Chairman

John DeLollis  
Kevin O'Callaghan  
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Michael Salgo

## **SUMMARY OF MATERIAL MODIFICATIONS** to the **New York City District Council of Carpenters Pension Plan** (Amended and Restated Effective January 1, 2014)

**To:** All NYCDCC Pension Plan Participants and Pensioners  
**From:** Board of Trustees  
**Date:** June 2018  
**Re:** Disability Pension Claims and Appeals Procedures

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This Summary of Material Modifications (“SMM”) describes changes to the claims and appeals procedures of the New York City District Council of Carpenters Pension Fund (the “Plan”). These changes are applicable to certain Disability Pension claims filed on or after April 2, 2018. Specifically, the new provisions apply to those cases in which the claimant does not have a Social Security Disability Award and, thus, the Plan, through its medical experts, must make a determination of disability in order to decide the claim. These changes do not affect the current eligibility requirements for a Disability Pension.

The current claims and appeals procedures are described on pages 27 and 28 of the Summary Plan Description (“SPD”) for the Pension Fund, which is available on the Fund’s website at [www.nyccbf.org](http://www.nyccbf.org).

Please read this SMM carefully and keep it with your SPD. It will also be added to the Fund’s website.

### **Claims and Appeals Procedures for Certain Disability Pension Claims Filed On or After April 2, 2018**

The SPD describes how claims and appeals are handled for pension benefits and it also includes provisions that only apply to Disability Pensions. The following additional provisions will apply to Disability Pension cases in which the claimant does not have a Social Security Disability Award and, thus, the Plan, through its medical experts, must make a determination of disability in order to decide the claim. These procedures apply if the claim was filed on or after April 2, 2018. These rules apply to any denial, reduction, or termination of, or a failure to provide or make payment (in

whole or in part) for a Disability Pension benefit provided under the Plan, and shall also mean any rescission of Disability Pension benefits (i.e., a cancellation or discontinuance of coverage that has retroactive effect).

**Additional Content Requirements for Certain Disability Pension Application Denials**

If (a) a claimant does not have a Social Security Disability Award and, thus, the Plan, through its medical experts, must make a determination of disability in order to decide an application for Disability Pension benefits, (b) the application was filed on or after April 2, 2018, and (c) the application is denied in whole or in part, the Fund Office's notice of denial will include the following information to the extent applicable in addition to the other information described in the SPD:

- (1) A discussion of the decision, including an explanation of the basis for disagreeing with or not following:
  - (i) The views presented by the claimant to the Plan of health care professionals treating the claimant and medical or vocational professionals who evaluated the claimant;
  - (ii) The views of medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and
  - (iii) The Social Security Administration's disability determination regarding the claimant if presented by the claimant to the Plan;
- (2) If the denial is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request;
- (3) Either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Plan relied upon in making the denial or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria of the Plan do not exist;
- (4) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits; and

- (5) The notification shall be provided in a culturally and linguistically appropriate manner in accordance with the requirements described in DOL Reg. §2560.503-1(o).

### **Review of Documents for Appeal**

Before the Board of Trustees or Appeals Committee can deny a Disability Pension appeal in those cases where a claimant does not have a Social Security Disability Award and the Plan must make a determination of disability in order to decide the claim, the Trustees shall provide the claimant, free of charge, any new or additional evidence considered, relied upon, or generated by the Trustees, or other person making the disability determination. Such evidence will be provided as soon as possible in order to give the claimant a reasonable opportunity to respond prior to the Trustees' decision on appeal.

Additionally, before the Board of Trustees or Appeals Committee can deny a Disability Pension appeal in those cases where a claimant does not have a Social Security Disability Award, based on a new or additional rationale, the Trustees shall provide the claimant, free of charge, with the rationale. Such rationale must be provided as soon as possible and sufficiently in advance of the date on which the Trustees' decision on the appeal is required to be provided to give the claimant a reasonable opportunity to respond prior to that date.

### **Additional Content Requirements for Certain Disability Pension Appeal Denials**

If (a) a claimant does not have a Social Security Disability Award and, thus, the Plan, through its medical experts, must make a determination of disability in order to decide an application for Disability Pension benefits, (b) the application was filed on or after April 2, 2018, and (c) the appeal is denied in whole or in part, the Trustees' notice of denial of appeal will include the following information to the extent applicable in addition to the other information described in the SPD:

- (1) A discussion of the decision, including an explanation of the basis for disagreeing with or not following:
  - (i) The views presented by the claimant to the Plan of health care professionals treating the claimant and vocational professionals who evaluated the claimant;
  - (ii) The views of medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a claimant's denial, without regard to whether the advice was relied upon in making the benefit determination; and
  - (iii) The Social Security Administration's disability determination regarding the claimant if presented by the claimant to the Plan;
- (2) If the denial is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical

judgment for the determination, applying the terms of the Plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request;

- (3) Either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Plan relied upon in making the denial or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria of the Plan do not exist;
- (4) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits; and
- (5) A description of the applicable contractual limitations period and its expiration date.
- (6) The notification shall be provided in a culturally and linguistically appropriate manner in accordance with the requirements described in DOL Reg. §2560.503-1(o).

#### **Deemed Denial and Exhaustion of Administrative Remedies**

Generally, if the Plan does not follow the applicable claims and appeals requirements with respect to disability benefit claims where the claimant does not have a Social Security Disability Award and the Plan must make a determination of disability in order to decide the claim, the claimant will be deemed to have exhausted the administrative remedies available under the Plan (unless the violations are "de minimis" in accordance with DOL Reg. §2560.503-1(1)(2)(ii)). Accordingly, a claimant is entitled to pursue any available remedies under ERISA §502(a) in such circumstances. If a claimant chooses to pursue remedies under ERISA §502, in these circumstances the claim or appeal is deemed denied on review without the exercise of discretion by an appropriate fiduciary.

If you have any questions regarding this SMM, please contact the Fund Office at **(800) 529-FUND (3863)**.