Village of Downers Grove

Official Village Policy Approved by Village Council

Description:	**PUBLIC SAFETY EMPLOYEE BENEFITS ACT (PSEBA)**
Res. or Ord. #:	**Ord. 5807** Effective Date: **1/7/20**
Category:	**Legislative and General Management**
	X New Council Policy
	____ Amends Previous Policy Dated:
	Description of Previous Policy (if different from above):

AN ORDINANCE ESTABLISHING AN ADMINISTRATIVE PROCEDURE FOR ASSESSING AND DETERMINING CLAIMS UNDER THE PUBLIC SAFETY EMPLOYEE BENEFITS ACT (PSEBA)

WHEREAS, the Village of Downers Grove (the "Village") is a home rule municipality in accordance with Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, pursuant to its Constitutional home rule powers, the Village has authority to "perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare" by adopting ordinances and promulgating rules and regulations that pertain to its government and affairs that protect the public health, safety, and welfare of its citizens; and

WHEREAS, in examining the grant of home rule authority in the Illinois Constitution, Illinois courts have noted that the "intentionally imprecise language grants local governmental units 'the broadest powers possible'" *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505 ¶ 108; and

WHEREAS, Illinois courts have interpreted home rule authority broadly in the face of judicial activism, "the intent and purpose of the home rule provisions in the Illinois Constitution is to severely limit the judiciary's authority to preempt home rule powers of municipalities through judicial interpretation of unexpressed legislative intent" *City of Oakbrook Terrace v. Suburban Bank and Trust Co.*, 364 Ill.App.3d (2nd Dist.2006); and

WHEREAS, home rule municipalities have been granted the constitutional authority to enact regulatory ordinances, "municipalities which have populations of more than 25,000 are home-rule units and may enact ordinances pertaining to municipal employees which conflict with State statutes concerning same matters," *Burgess v. Board of Fire & Police Comm'rs*, 209 Ill.App.3d 821 (4th Dist. 1991); and

WHEREAS, the Public Safety Employee Benefits Act ("PSEBA" or "Act") was enacted in 1997 to provide certain health insurance benefits to any public safety employee covered by the Act who suffers a catastrophic injury or is killed in the line of duty (820 ILCS 320/1 *et seq.*); and

WHEREAS, pursuant to the court's holding in *Pedersen v. Village of Hoffman Estates,* 2014 IL App (1st) 123402, ¶37, the Village has the right to establish an "administrative procedure for assessing claims without acting in a manner inconsistent with the requirements of the Act", including the ability to use home rule authority to enact an ordinance to determine, assess, and outline the administrative process for assessing eligibility under PSEBA; and

WHEREAS, the Village, under its home rule authority and pursuant to *Pedersen* has "the authority to establish an administrative procedure for determining claims for benefits under the Act," (*Id.* at ¶ 63); and

WHEREAS, in *Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶25 (2015) (emphasis in original), the Illinois Supreme Court held that a pension board's award of a line of duty disability pension "establishes as a matter of law that the public safety employee suffered a catastrophic injury" as required under Section 10(a) of the PSEBA; and

WHEREAS, once an employee is awarded a line of duty disability, the only remaining question of entitlement to PSEBA benefits is whether the employee meets the criteria established in Section 10(b) of the Act; and

WHEREAS, as a result of the decision in *Pedersen*, the Village now desires to adopt the following ordinance and finds that this is in the best interest of the citizens' health, safety, and welfare.

NOW, THEREFORE, be it ordained by the corporate authorities of the Village of Downers Grove as follows:

Section 1:

(A) *Purpose.* The purpose of this ordinance is to provide a fair and efficient method of determining the eligibility of full-time Downers Grove police officers and firefighters for the benefits enumerated under the Act. All benefits shall be consistent with PSEBA, and be no less than nor greater than those provided by the Act and this Ordinance.

(B) *Definitions.* For the purpose of this Section, the following terms will have the following meanings:

1. *Applicant.* Means any person who files a written application as described herein to receive PSEBA benefits from the Village.

2. *Basic Level Insurance.* The term Basic Level Insurance shall mean the Village's "retiree health insurance plan" offered to all Village retirees. PSEBA benefits shall not include dental insurance, vision insurance, life insurance or any other benefit provided to Village employees or retirees.

3. *Catastrophic Injury.* Catastrophic Injury shall have the meaning established by the Illinois courts or legislation: whichever is more restrictive.

4. *Dependent Child and Dependent for Support.* Dependent Child and Dependent for Support shall both be defined as a Dependent Child according to the Village's Health Insurance Plan.

5. *Director*. Director shall mean the Director of the Village's Human Resources Department or his designee.

6. *Emergency*. Emergency shall have the meaning established by Illinois courts or legislation: whichever is more restrictive.

7. *Firefighter*. Firefighter shall mean a full-time firefighter employed by the Village of Downers Grove on duty at the time of his/her catastrophic injury.

8. *Police Officer*. Police officer shall mean a full-time law enforcement officer of the Village of Downers Grove on duty at the time of his/her catastrophic injury.

9. *Spouse*. Spouse of the "injured Firefighter or Police Officer" shall be defined by the Village's Health Insurance Plan.

(C) *Application Procedure*. Any person seeking to receive PSEBA benefits from the Village must submit a full and complete application in writing, on a form provided by the Village, with all required supporting documentation, to the Director of Human Resources. The Applicant may submit any additional information that the Applicant wants to be considered in support of the application. The application must be submitted no later than sixty (60) days after the granting of a line-of-duty disability pension. The Village shall notify the Applicant if the PSEBA application is incomplete and Applicant shall have sixty (60) days to remedy the application. Failure to timely file the full and complete application shall result in a waiver and forfeiture of the claim for benefits under PSEBA.

1. A complete PSEBA application includes the following:

   i. Answers to all questions included on the application form;

   ii. In the event the Village makes a good faith determination that it cannot determine PSEBA eligibility in the absence of all information and supporting documentation filed with the Pension Board and/or in connection with related worker's compensation claim proceedings, and the Village does not otherwise have access to the necessary information, the Village may require a signed PSEBA medical authorization release which authorizes the collection of information related to the injury including, but not limited to, disability pension proceedings, worker's compensation records, and medical records and specifies the name and address for pertinent health care provider(s).

   When the Village makes a valid request for additional medical records, the Medical Release shall be provided by the Director, authorizing the collection of medical information by the Village related to the incident. The PSEBA Medical Release shall specify the name, address, email and phone information for pertinent health care providers and hospitals, along with the employee's signature and a witness's signature. The release shall comply with HIPAA standards. When a valid request for Medical Records is made, such records shall be considered "Supporting Documents" as required below in Section 1(C)(1)(vi). Any medical records obtained through the application process shall be maintained in compliance with the Americans with Disabilities Act.

iii. If necessary, a signed PSEBA general information release authorizing the collection of information pertinent to the incident review process;

iv. The name(s) and contact information, if known, of witnesses to the incident;

v. Information and supporting pension documentation filed with the appropriate pension board, including all transcripts and exhibits;

vi. Information supporting the PSEBA eligibility requirements (i.e. name of the employee; the full name of the applicant's Spouse, date of marriage, with marriage license attached; birth certificates or adoption orders for all Dependent Children, and any and all other documents establishing that the child is "dependent" as set forth in the Village's Health Insurance Plan Document; the date of hire; detailed information regarding the incident including date, time, place and nature of injury, and any other factual circumstances surrounding the incident giving rise to said claim; the identities of witnesses to the incident, the names of witnesses the applicant may call at a PSEBA hearing; any and all rulings or determinations by the Pension Board; any and all documents supporting the PSEBA eligibility requirement for Applicant's Beneficiaries, including: proof of active school enrollment and employment. The documents required to be submitted with the application are defined as Supporting Documents); and

vii. Information relating to eligibility for other sources of health insurance benefits, currently enrolled in, offered to, or received by the Applicant and/or family members and a description of the benefits offered or received. This shall include written documentation from the other source of benefits, including but not limited to another employer of the employee or an employer of the employee's spouse or children.

2. The PSEBA application must be sworn and notarized to certify the truthfulness of the information. A review of the application shall not occur until the complete application, including the Supporting Documents, is submitted to the Director. If the Applicant willfully and knowingly makes, or causes to be made, any false, fraudulent, or misleading oral or written statement to obtain health insurance coverage as provided by the Act, the Applicant forfeits any claim or right to receive benefits under the Act.

(D) *Application Review by Village Manager (Notification).*

Upon receipt of a timely fully completed PSEBA application filed, the Village Manager shall have sixty (60) days to review the application and supporting documents and make an initial determination as to whether a PSEBA qualification hearing is required.

1. *Additional Information.* The Village Manager may require other information necessary to make a determination as to whether a qualification hearing is required, including, but not limited to, health insurance benefits the employee is currently receiving or is eligible to receive or any other health insurance benefits the applicant's Beneficiaries are otherwise entitled to. If the Village Manager requests additional information that was not otherwise required, the request for additional information shall not be used to deem the application untimely or incomplete, as long as the applicant provides the additional information within sixty (60) days of the Village Manager's request.

2. *PSEBA Approval.* If the Village Manager determines that all PSEBA requirements have been satisfied, the Village Manager may grant the PSEBA benefits. Upon such grant, the applicant will be notified and required to contact the Director within thirty (30) calendar days for benefit explanation and processing.

3. *PSEBA Denial.* If the Village Manager denies the application, the applicant will receive notice of such denial and the applicant shall have the right to request, in writing, a qualification hearing, which shall be served on the Village Manager not later than thirty (30) calendar days after being served with a written notice of initial denial.

4. *Request PSEBA Hearing.* If the applicant fails to request a PSEBA qualification hearing within thirty (30) days, the applicant may contact the Director to discuss other potential health insurance options. Failure to request an administrative hearing within thirty (30) days after being served with a written notice of denial of the application by the Village Manager, shall result in a forfeiture of PSEBA benefits.

5. *Setting Initial Date.* If the applicant requests an administrative hearing, the Village Manager will appoint an Administrative Hearing Officer within thirty (30) days of the request. The Administrative Hearing Officer shall set the first date of the administrative hearing within thirty (30) calendar days of being appointed.

(E) *Hearing Officer.*

1. *Appointment of Hearing Officer.* The Village Manager is hereby authorized to appoint one or more persons to hold the position of Administrative Hearing Officer for any Village PSEBA administrative hearing. In making this selection, the Village Manager shall consider all of the pertinent information, including at a minimum:

   a. The candidate's ability to completely perform the services;

   b. The candidate's background, service and performance data on file with the Village or otherwise obtained by the Village; and

   c. The candidate shall be an attorney licensed to practice law in the state of Illinois for at least three years prior to appointment and have knowledge of and experience in employment and labor law, general civil procedure, the rules of evidence and administrative practice.

2. *Power of the Hearing Officer.* The Hearing Officer shall have all the powers granted under common law relative to the conduct of an administrative hearing, including the power to:

   a. Preside over PSEBA hearing(s);

      i. Administer oaths;

      ii. Hear testimony under oath or affirmation and accept evidence that is relevant to the issue of eligibility;

      iii. Issue subpoenas to secure attendance of witnesses or the production of

relevant papers or documents upon request of the parties or their representative;

iv. Rule upon objections and the admissibility of evidence and other motions;

v. Preserve and authenticate the record of the hearing and all exhibits in evidence introduced at the hearing; and

vi. Issue written factual findings and a decision based on: each element required under the Act to establish the applicant's qualifications, the evidence presented at the hearing, the law, and after entertaining (oral or written) arguments as directed by the Administrative Hearing Officer.

(F) *Administrative Hearing.*

1. The administrative hearing shall be held to adjudicate and determine whether the applicant is eligible for PSEBA benefits consistent with the Act and this Ordinance and as follows:

a. *Time and Date.* Hearing shall be held on the date, time and place established by the Administrative Hearing Officer with appropriate notice served upon the applicant.

b. *Hearing Transcription.* The Village shall secure the attendance of a certified court reporter to make a transcript of all hearings. The Village and the applicant shall split equally the cost of the court reporter's appearance fee and the cost of one transcript for the hearing officer. If the Village or the applicant requests their own copies of the transcript, they shall bear the entire cost of their own copies.

c. *Procedures.* The Village and the applicant shall be entitled to representation by counsel at said hearing and may present witnesses, testimony and documents, cross-examine witnesses, request the issuance of subpoenas to compel appearances of witnesses and the production of relevant documents. Each party shall bear its own costs of counsel and witnesses.

d. *Evidence.* The Illinois Rules of Evidence shall apply to the extent practicable unless the Administrative Hearing Officer determines that application of a rule would be an injustice or preclude the introduction of evidence of the type commonly relied upon by a reasonably prudent person in the conduct of their affairs. Such determination shall be in the sole discretion of the Administrative Hearing Officer, but the Administrative Hearing Officer shall state on the record the reason for that determination.

e. *Burden of Proof.* The applicant shall have the burden of proceeding and the burden of proof to establish that the applicant and Applicant's Beneficiaries are qualified to receive PSEBA benefits pursuant to the Act.

f. *Administrative Records.* All records pertaining to the administrative process will be held in a separate file in the employee's name in the Village's Human Resources Department.

(G) *Administrative Review.* The Administrative Hearing Officer's determination shall be final and subject to a common law writ of certiorari by the applicant or the Village.

(H) *Health Insurance Benefits.* Upon qualification for PSEBA benefits, the beneficiary shall be entitled to the Village's Basic Level Insurance.

(I) *Open Enrollment.* Applicants receiving benefits under PSEBA shall annually complete a PSEBA extension application provided by the Director no later than thirty (30) days prior to the end date of all Village open enrollment periods.

(J) *Other Health Insurance Benefits.*

1. *Other Benefits.* Health insurance benefits payable from any other source will reduce the benefits payable from the Village. Each Applicant shall sign an affidavit attesting that the applicant is not eligible for insurance benefits from any other source, unless there is another source. If there is another source, the Applicant shall notify the Village of that source no later than five (5) business days from that source becoming available to the Applicant or the Applicant's beneficiaries.

2. *Disclosure of Health Insurance Coverage.* The applicant has an on-going obligation and shall update health insurance coverage information provided and failure to do so may result in the denial of benefits and/or reimbursement to the Village for duplicate coverage. If duplicate coverage has been received by a PSEBA beneficiary, further PSEBA benefits will be denied until the Village has been fully reimbursed by the PSEBA beneficiary for what it would have been credited if it had known about other coverage.

3. *Reimbursement.* Receipt of health insurance benefits from other sources without notice to the Village shall require the applicant to reimburse the Village for the value of those benefits.

4. *Medicare Eligibility.* The applicant shall notify the Village when the applicant becomes Medicare eligible regardless of the status of the enrollment period, so the Village may assist with the transition to Medicare coverage and/or adjust health insurance benefits or PSEBA benefits accordingly.

Section 2. Severability.

If any provision of this Ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

Section 3. Conflict of Laws.

Where the conditions imposed by any provisions of this Ordinance are more restrictive than comparable provisions imposed elsewhere in any other local law, ordinance, resolution, rule or regulation, the regulations of this Ordinance will govern.

Section 4. That all ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 5. This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

Mayor

Passed: January 07, 2020
Published: January 08, 2020
Attest: Meagan Miles
Village Clerk

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APPLICATION FOR PUBLIC SAFETY EMPLOYEE BENEFIT ACT (PSEBA) BENEFITS

The completion of this Application does not automatically qualify the Applicant for benefits. The Village shall determine eligibility. Additional information may be requested or required. Failure to complete or provide sufficient details of the circumstances of the incident or submitting false information shall result in denial of benefits.

1. Name and Address of Individual Completing Application: _____

_____

2. If the person completing this application is not the public safety employee, state your relationship to said employee, and the name and position of said employee.

_____

3. Is the public safety employee injured or deceased? _____

4. Name, age and relationship of spouse and legal dependents of the employee.

_____

_____

_____

5. Describe in detail when, where and how injury or death occurred.

_____

_____

_____

6. List the names and contact information, if known, of any witnesses to the incident giving rise to the injury or death.

_____

_____

7. How did the injury/death directly result from:

   i. Response to fresh pursuit; or

   ii. Response to what is reasonably believed to be an emergency; or

iii. An unlawful act perpetrated by another; or

iv. Participation during the investigation of a criminal act.

_____

_____

_____

_____

8. Describe the nature and extent of the injuries which give rise to the claim for PSEBA benefits. State the name and address of any treating physicians.

_____

_____

_____

9. Describe the nature, extent, date and circumstances of any previous personal injuries or illness (work or non-work related) that created any temporary, partial or permanent disability for the employee. State the name and address of any treating physicians.

_____

_____

_____

10. Did any of the injuries identified in the question immediately preceding effect the employee's ability to perform his/her job duties? If yes, explain how.

_____

_____

11. Aside from the incident for which the employee is seeking PSEBA benefits, has any physician rendered an opinion that the employee is physically unable to perform the function of the employee's job? If yes, state the name and address of the physician.

_____

12. State whether the employee was employed by any other employer or was self-employed in the twelve (12) months preceding the injury/death. If so, state the name and address of the employer, position held and hours worked.

_____

_____

13. Was the employee working in any other capacity in the forty-eight (48) hours preceding the injury/death for which they are seeking PSEBA benefits? If yes, where were they working and what were they doing?

_____

_____

14. Has a line-of-duty disability pension been granted by a Downers Grove pension board? If yes, provide the date the pension was granted along with a copy of the Pension Board's decision and copies of any materials submitted by you or considered by the Board. If no, provide the date and a copy of the pension application along with copies of any materials submitted.

_____

15. Provide any other facts that you believe would qualify the employee for PSEBA benefits.

_____

_____

_____

16. Is the employee currently employed? If yes, provide the name, address and telephone number of the employer, and the position and job duties of the employee.

_____

_____

17. Is the employee eligible for health insurance benefits through his/her current employer? If yes, provide details of the benefits offered, including name of insurance company and premiums.

_____

_____

18. Is the spouse of the employee currently employed? If yes, provide the name, address and telephone number of the employer.

_____

19. Is the spouse of the employee eligible for health insurance benefits through his/her current employer? If yes, provide details of the benefits offered, including insurance company and premiums.

_____

20. Is the child(ren) of the employee currently employed? If yes, provide the name, address and telephone number of the employer.

_____

_____

21. Is the child(ren) of the employee eligible for health insurance benefits through their employer? If yes, provide details of the benefits offered, including insurance company and premiums.

_____

_____

22. Is the child(ren) of the employee eligible for health insurance benefits through any other source, such as a parent who is not the spouse of the employee? If so, provide the details of the eligibility for insurance including the identity and relationship of the individual through whom the child(ren) are eligible for insurance.

_____

_____

23. Is the child(ren) currently enrolled in school? If yes, state the date(s) the child(ren) was enrolled, course of study, and anticipated date of graduation.

_____

_____

If the employee, spouse or any dependent children become eligible and/or obtain other sources of health insurance benefits, you must notify the Village within thirty (30) days of the effective date.

If you or your spouse become employed or are self-employed, you must notify the Village within thirty (30) days of the effective date along with the identity of the employer and position held.

To determine eligibility for PSEBA benefits, the Village will review relevant medical records concerning the employee. You must submit an executed waiver/release (attached hereto) to authorize the Village to review these records.

VERIFICATION OF INFORMATION PROVIDED BY APPLICANT

This statement is made for the sole purpose of receiving benefits under the Public Safety Employee Benefits Act from the Village of Downers Grove. The information contained in this application is true to the best of my knowledge and belief. I understand that it is unlawful for a person to willfully and knowingly make, or cause to be made, any false, fraudulent, or misleading oral or written statement to obtain health insurance coverage as provided by the Act (820 ILCS 320/10(a)(3)). Such actions constitute a Class A Misdemeanor and can serve as the basis for denial or forfeiture of any benefits paid out under the Act. I agree to abide by the requirements set forth above for retention of any benefits provided by the Village of Downers Grove.

_____ _____

Signature of Applicant Date

Subscribed and sworn to before me
this ____ day of _____, 20___.

_____

Notary Public

MEDICAL INFORMATION RELEASE

(Required for each health care provider)

To: _____ (provider's or hospital's name and address)

_____

_____

_____

I hereby authorize my physician, physical therapist, and any other health care provider, as well as the institution(s) with which they are affiliated, to release to the Village of Downers Grove and/or its representatives any medical records or other medical information (including but not limited to medical or mental health records, reports, x-rays, photographs, notes, bills, prescriptions, insurance records or claim forms) which relate in any way to my ability to perform the essential duties of police officer or firefighter with the Village of Downers Grove or relate to my eligibility for benefits under PSEBA. The above described records and information should be released to the Human Resources Director of the Village of Downers Grove or any other authorized Village representative or attorney.

This request specifically includes the release of any records relating to my current or past mental health status as deemed relevant by the Village of Downers Gove, so that the Village may assess my eligibility for benefits under PSEBA. I understand that by releasing these records, I am waiving any rights I might have under the Illinois Mental Health and Developmental Disabilities Confidentiality Act, which governs disclosure of certain confidential mental health information. I understand that if I refuse to consent to disclose these records, the Village may proceed with determining my eligibility for PSEBA benefits solely on the other information provided.

This consent will expire one year from the date next to my signature, unless I revoke it earlier, in writing, signed by a witness. I understand any such revocation will not be effective until delivered to the health care provider listed above and will not affect any prior release of information. I understand I may ask to inspect and/or copy the records which are being released.

_____ _____

Signature Date

_____

Witness

AFFIDAVIT REGARDING ELIGIBILITY FOR HEALTH INSURANCE BENEFITS

I, _____ (HEREINAFTER THE "Affiant"), being first duly sworn on oath, state as follows:

1. Affiant has made an application to the Village of Downers Grove for health coverage benefits pursuant to the Public Safety Employee Benefits Act (the "Act").

2. Affiant does not have any health insurance benefits available or payable other than those benefits that may have bee, or are, in place as a result of Affiant's participating in a Village of Downers Grove health plan which provided health coverage benefits prior to the granting of the health coverage benefits under the Act (hereinafter referred to as "any health insurance benefits available or payable") to him/him from a third party, from the date of Affiant's injury upon which the application for PSEBA benefits was filed (hereinafter referred to as "Affiant's injury").

3. If Affiant is married, Affiant's spouse does not have any health insurance benefits available or payable to him/her from a third party from the date of Affiant's injury to the present date.

4. If Affiant is the father/mother of minor children, who are dependent upon him/her for support, none of these children have any health insurance benefits available or payable to them or their parents or guardians from a third party from the date of Affiant's injury to the present date.

5. If any health insurance benefits become available or payable to Affiant, Affiant's spouse or Affiant's children, Affiant shall notify the Village of Downers Grove Human Resources Director in writing within fifteen (15) days of the effective date that such benefits become available or payable.

6. Affiant shall provide an affidavit to the Village upon its request affirming whether health insurance benefits are available or payable to Affiant, Affiant's spouse or Affiant's children.

AFFIANT FURTHER SAYETH NAUGHT.

_____

Subscribed and sworn to before me
this _____ day of _____ 20__.

_____
Notary Public