

ORDINANCE 19-31

AN ORDINANCE AMENDING TITLE 2, ADMINISTRATION AND PERSONNEL, OF THE CARPENTERSVILLE MUNICIPAL CODE TO ESTABLISH AN ADMINISTRATIVE PROCEDURE FOR ASSESSING AND DETERMINING CLAIMS UNDER THE PUBLIC SAFETY EMPLOYEE BENEFITS ACT

WHEREAS, the Village of Carpentersville, Kane County, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the Village's home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, the Public Safety Employee Benefits Act ("PSEBA") or "Act" was enacted in 1997 to require taxpayer payment for health insurance benefits, when a "full-time law enforcement officer, correctional or correctional probation officer, or firefighter suffers a catastrophic injury or is killed in the line of duty." (820 ILCS 320/10(a)); and

WHEREAS, the Village under its home rule authority and, pursuant to *Pederson v. The Village of Hoffman Estates*, 380 Ill. Dec. 541 (1st Dist. 2014), has authority to establish an administrative procedure for determining claims for benefits under the Act; and

WHEREAS, among other things, the Act fails to define "basic group health insurance plan,"

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Carpentersville, Illinois, pursuant to its home rule authority, that Article 2, "Administration and Personnel" be amended to add a Chapter 2.90 – Administrative Procedures to Determine Eligibility Under the Public Safety Employee Benefit Act and Establish Definitions and Procedures for the Maintenance of Such Benefits After Their Award, as follows:

SECTION 1. Title 2, Administration and Personnel, of the Carpentersville Municipal Code shall be amended to add Chapter 2.90, Administrative Procedure to Determine Eligibility Under the Public Safety Employee Benefit Act and Establish Definitions and Procedures for the Maintenance of Such Benefits After Their Award, to read as follows:

Sec. 2.90.010 - Purpose.

The purpose of this Chapter 2.90 is to provide a fair and efficient method of determining the eligibility of full-time Carpentersville police officers and firefighters to the benefits enumerated under the Public Safety Employee Benefits Act ("PSEBA" or "Act"). All benefits shall be consistent with PSEBA and be no lesser than nor greater than, those provided by the Act and this Chapter 2.90.

Sec. 2.90.020 - *Not a contract.*

The administrative procedure provided in Chapter 2.90 is not a contract that bestows a benefit or entitlement on any particular individual and may be modified or amended by the Village at any time.

Sec. 2.90.030 - *Definitions.*

Basic level insurance shall mean the lowest-cost plan available to the Village's regular, full-time employees as determined by total annual premium.

Catastrophic injury shall have the meaning established by the Illinois courts or legislation, including one or more of the circumstances set forth in 820 ILCS 320/10(b), whichever is more restrictive.

Dependent child and dependent for support shall both be defined as a dependent child according to the Village's health insurance plan.

Director shall mean the highest level employee in the Village's human resources department or their designee.

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

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

Police officer shall mean a full-time law enforcement officer of the Village of Carpentersville on duty at the time of his/ her catastrophic injury.

Spouse of the "injured firefighter or police officer" shall be defined by the Village's health insurance plan.

Sec. 2.90.040 - *PSEBA initial qualification.*

Any firefighter or police officer who, after November 14, 1997, suffers a catastrophic injury or is killed in the line of duty, may apply for health insurance benefits under PSEBA in strict conformance with the standards set forth in this Chapter 2.90. The same benefits may be extended to a spouse and eligible dependent children (hereinafter "applicant's beneficiaries"), provided that all terms and conditions as established in PSEBA and this section are fully satisfied.

Sec. 2.90.050 - *Application procedure.*

A PSEBA application shall be filed by a PSEBA applicant no later than 60 days from the date a permanent duty-related disability pension claim is awarded. Any police officer or fire fighter who is not subject to the jurisdiction of the police or fire pension board shall submit a completed PSEBA application within six months of sustaining the alleged catastrophic injury.

The Director shall provide the applicant with a copy of this section at the time the PSEBA application is provided. In the event that an employee is receiving PSEBA as of the date of adoption of this ordinance, employee's receipt of such benefit shall be grandfathered as to the original application, but not as to the extension application as required in section 2.90.110.

A. The application shall include the 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 and the names and addresses of the employee's medical providers; information and supporting documentation filed with the pension board by the applicant and all exhibits on file with the pension board; 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. Failure to file a fully complete application, along with submittal of all supporting documents, shall result in a forfeiture of PSEBA benefits until the next date of open enrollment for the insurance.

B. *Medical release required.* Medical records shall be secured by the Village. Medical releases provided by the Director, authorizing the collection of medical information by the Village related to the incident, including, but not limited to, disability pension proceedings, workmen's compensation records and medical records shall be signed by the applicant and submitted with the PSEBA application. The PSEBA medical releases shall specify the name, address, email and phone information for pertinent health care providers and hospitals, along with the applicant's signature and a witness's signature. The medical releases shall comply with HIPAA standards. Medical records shall be considered "supporting documents" as required above.

C. *Additional information.* The Village Manager shall, at any time, have the authority to modify the PSEBA application form, or seek additional

information from an applicant or other source of relevant information, to better enable the Village to ascertain the applicant's qualifications.

D. *No review until complete application filed.* The Village's initial review of the PSEBA application will not occur until all of the required information, including the supporting documents, are submitted to the Director.

E. *Sworn application.* Any application for PSEBA benefits shall be sworn to by the applicant and notarized. All supporting documents filed for PSEBA qualification shall be verified under oath by the applicant and notarized.

Sec. 2.90.060 - *Application review by Village Manager (notification).*

Upon receipt of a timely fully completed and filed PSEBA application, the Village Manager shall have 30 days to review the application and supporting documents and make an initial determination as to whether or not a PSEBA qualification hearing is required or if a determination can be made without a hearing.

A. *Additional information.* The Village Manager may require other information necessary to make a determination as to PSEBA eligibility and as to whether or not a qualification hearing is required, including, but not limited to, health insurance benefits the applicant 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 30 days of the Village Manager's request.

B. *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 30 calendar days for benefit explanation and processing.

C. *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 30 calendar days after being served with a written notice of initial denial.

D. *Request PSEBA hearing.* In the event of a denial, if the applicant fails to request a PSEBA qualification hearing within 30 days, the applicant shall contact the Director to discuss other potential health insurance options. Failure to request an administrative hearing when 30 days after being served with a written notice of denial by the Village Manager, shall result in a forfeiture of PSEBA benefits for that plan year. The Village Manager may also request an

administrative hearing if there is insufficient evidence to determine whether or not the PSEBA benefits should be approved or denied.

E. *Setting initial date.* If the applicant requests an administrative hearing, the Village Manager will refer the matter to an administrative hearing officer within 30 days of the request. The administrative hearing officer shall set the first date of the administrative hearing within 30 calendar days of being appointed.

Sec. 2.90.070 – *Administrative hearing officer/administrative hearing.*

A. *Appointment of administrative 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:

- i. The candidate's ability to completely perform the services;
- ii. The candidate's background, service and performance data on file with the Village or otherwise obtained by the Village; and
- iii. 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.

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

- i. Preside over PSEBA administrative hearing(s);
- ii. Administer oaths;
- iii. Hear testimony under oath or affirmation and accept evidence that is relevant to the issue of PSEBA eligibility;
- iv. Issue subpoenas to secure attendance of witnesses in the production of relevant papers or documents upon request of the parties or their representatives;
- v. Rule upon objections and the admissibility of evidence and other motions;
- vi. Preserve and authenticate the record of the administrative hearing and all exhibits in evidence introduced at the administrative hearing; and

vii. 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 administrative hearing, the law, and after entertaining (oral or written) arguments as directed by the administrative hearing officer.

viii. For administrative hearing for fire fighters and police officers who are not subject to the jurisdiction of the fire or police pension boards, the administrative hearing officer shall also make a determination of whether the applicant sustained a catastrophic injury, following the same law and making factual inquires as if the fire fighter or police officer was subject to the jurisdiction of a fire or police pension board. All provisions of this ordinance shall be followed by the administrative hearing officer in this type of hearing.

Sec. 2.90.080 - Administrative hearing.

A. The administrative hearing shall be held to adjudicate and determine whether the applicant is eligible for PSEBA benefits consistent with the Act and this Chapter 2.90 and as follows:

i. *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.

ii. *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 administrative hearing officer. If the Village or the applicant requests his/its own copy of the transcript, the requesting party shall bear the entire cost of his/its own copy.

iii. Normally, the transcript shall be prepared based on the court reporter's standard, non-expedited time schedule. If one party requests an expedited transcript, that party shall bear the entire amount of the increased cost for the expedited transcripts, including the extra cost of any and all copies of the expedited transcripts.

iv. *Procedures.* The Village and the applicant shall be entitled to representation by counsel at said administrative 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.

v. *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.

vi. *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.

vii. *Final determination.* The determination of the applicant's eligibility for PSEBA benefits shall constitute a final administrative determination for purposes of judicial review.

viii. *Administrative records.* All records pertaining to the administrative hearing process will be held in a separate file in the applicant's name in the Village's human resources department.

Sec. 2.90.090 - *Administrative review.*

The administrative hearing officer's determination shall be subject to a common law writ of certiorari by the applicant or the Village.

Sec. 2.90.110 - *Health insurance benefits.*

Upon qualification for PSEBA benefits, the beneficiary shall be entitled to the Village's basic level insurance. An applicant may choose to enroll in any other health insurance plan offered by the Village different from the basic level insurance, but shall pay the difference in insurance premium between the Village's basic level insurance and the selected non-basic level plan. Failure of the PSEBA beneficiary to timely pay the difference in the insurance premium's non-basic level plan shall result in coverage in the basic level plan.

Open enrollment. PSEBA beneficiaries shall annually complete a PSEBA extension application provided by the Director no later than 30 days prior to the end date of all Village open enrollment periods.

Sec. 2.90.120 - *Other health insurance benefits.*

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

B. *Disclosure of health insurance coverage.* The PSEBA beneficiary 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 or it otherwise recovers the value of duplicative coverage through any other means available at law.

C. *Reimbursement.* Receipt by the PSEBA beneficiary or the applicant's beneficiaries of health insurance benefits from other sources without notice to the Village shall require the PSEBA beneficiary to reimburse the Village for the value of those benefits.

D. *Medicare eligibility.* The PSEBA beneficiary shall notify the Village when the PSEBA beneficiary or applicant's beneficiaries become 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: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

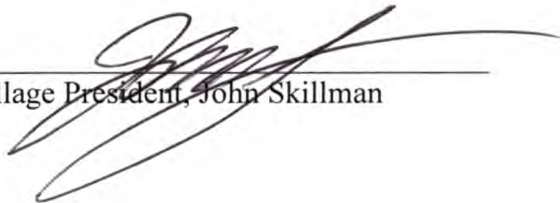
SECTION 4: This Ordinance shall be in full force and effect upon its approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Passed this 15th day of October, 2019, by roll call vote as follows:

	Ayes	Nays	Absent	Abstain
Trustee Jeff Frost	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Trustee John O'Sullivan (Motion)	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Trustee Jim Malone	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Trustee Maria Vela	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Trustee Humberto Garcia (Second)	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Trustee Bobbie Andresen	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
President John Skillman	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

APPROVED THIS 15TH DAY OF OCTOBER, 2019.




Village President, John Skillman

ATTEST:


Village Clerk, Kelly Mastera

Published: 10-17-19



CERTIFICATION

I, Kelly Mastera, do hereby certify that I am the duly appointed, acting and qualified Clerk of the Village of Carpentersville, Kane County, Illinois, and that as such Clerk, I am the keeper of the records and minutes and proceedings of the President and Board of Trustees of said Village of Carpentersville.

I do further certify that at a regular meeting of the President and Board of Trustees of the Village of Carpentersville, held on the 15th day of October 2019, the foregoing Ordinance entitled, *An Ordinance Amending Title 2, Administration and Personnel, of the Carpentersville Municipal Code to Establish an Administrative Procedure for Assessing and Determining Claims Under the Public Safety Employee Benefits Act* as duly passed by the President and Board of Trustees of the Village of Carpentersville.

The pamphlet form of Ordinance No. 2019- 31, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was available in the Village Hall, commencing on the 17th day of October, 2019, and will continue for at least 10 days thereafter. Copies of such Ordinance are also available for public inspection upon request in the office of the Village Clerk.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as the Clerk of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

Given under my hand and seal of the Village of Carpentersville this 17th day of October, 2019.



Kelly Mastera, Village Clerk
Village of Carpentersville,
Kane County, Illinois

