

ORDINANCE NO. M-2271

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

WHEREAS, the Illinois Legislature has granted non-home rule municipalities the broad authority to “pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities” (65 ILCS 5/1-2-1); and

WHEREAS, while “non-home rule municipalities have the authority to enact ordinances, such ordinances may in no event conflict with state law or prohibit what a state statute expressly permits . . . A local ordinance may impose more rigorous or definite regulations in addition to those enacted by the state legislature so long as they do not conflict with the statute” (*Village of Wauconda v. Hutton*, 291 Ill. App. 3d 1058, 1060 (1997)); and

WHEREAS, the Public Safety Employee Benefits Act (“PSEBA” or “Act”) was enacted in 1997 to provide free health insurance benefits when a “full-time law enforcement, 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 Illinois Appellate Court in *Englum v. The City of Charleston*, 2017 Ill. App. (4th) 160747 (2017) found that a non-home rule municipality’s ordinance establishing an administrative procedure for assessing claims under PSEBA “complemented the determinations of the legislature by enacting a procedural process to fulfill the substantive requirements of the [Act]” and such an ordinance “facilitate[s] the purpose of the [Act]” ¶ 73; and

WHEREAS, the Court in *Englum* found that non-home rule municipalities have the authority to enact an ordinance establishing a local administrative procedure to determine eligibility for PSEBA benefits; and

WHEREAS, the Board of Trustees enacted Ordinance M-2128 on June 11, 2019 to establish a local administrative procedure; and

WHEREAS, the Illinois General Assembly has enacted Public Act 103-0340 that modified PSEBA regarding the insurance options to be made available to covered employees; and

WHEREAS, the Village of Homewood (“Village” or “Homewood”) desires to amend its ordinances to comply with Public Act 103-0340; and

WHEREAS, as a result of the decision in *Englum*, the Village of Homewood desires to adopt the following ordinance and finds it to be in the best interest of its citizens' health, safety, and welfare.

NOW THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Homewood, Cook County, Illinois, as follows:

SECTION ONE - PURPOSE

The purpose of this Ordinance is to provide a fair and efficient method for determining the eligibility of a full-time employee, spouse or dependents for the benefits enumerated under PSEBA through an administrative process, including if necessary, an administrative hearing.

SECTION TWO - APPLICATION PROCEDURE

As noted by the Court in *Englum*, "while the [Act] contained *substantive* requirements for section 10 eligibility, the [Act] contained no *procedural* requirements for determining whether a former employee met the substantive criteria." ¶ 55. This Ordinance and the application procedure of this section establish guidance on the proper procedural requirements for public safety officers seeking PSEBA benefits in the Village.

- A. Public safety officers, or family member(s) of an injured or deceased public safety officer, (Applicant) must file a full and complete PSEBA application in writing within sixty (60) days of the date of a written decision granting a line of duty disability and/or survivor's pension claim with the Homewood Fire Pension Board or Police Pension Board, or within sixty (60) days of the adoption of this Ordinance if an Applicant has filed for a pension or PSEBA claim before the date of adoption of this Ordinance, whichever is later, if the Applicant is seeking an initial award of benefits under PSEBA. Submission of an application for PSEBA benefits shall toll the applicable statute of limitations for PSEBA until the completion of this administrative procedure. The Village shall notify Applicant if the PSEBA application is incomplete and Applicant shall have thirty (30) days to remedy their application. Failure to timely file the full and complete application shall result in a forfeiture of the benefits under PSEBA if the submitted application prevents the Village from evaluating the merits of the Applicant's claim through conducting a hearing as provided in this ordinance. The Village shall provide the Applicant with a full and complete copy of this Ordinance, if at any time it becomes aware that a firefighter or police officer, or their family member(s), may be eligible for PSEBA benefits.
- B. A complete PSEBA application includes the following:

1. The name of the Applicant, date of hire, detailed information regarding the incident, including information relating to how the injury was sustained in the line of duty (date, time, place, nature of injury and other factual circumstances surrounding the incident giving rise to said claim);
 2. A summary of the Applicant's claim explaining how the injury/death directly resulted from:
 - i. Response to fresh pursuit;
 - ii. Response to what is reasonably believed to be an emergency;
 - iii. An unlawful act perpetrated by another; or
 - iv. During the investigation of a criminal act;
 3. A signed PSEBA medical authorization release authorizing the collection of information related to the incident including, but not limited to, disability pension proceedings and documents submitted to the pension board, worker's compensation records, and medical records and specifying the name and address for pertinent health care provider(s);
 4. A signed PSEBA general information release specifying the name and signature of the Applicant or their authorized representative along with legal proof of the representation authorizing the collection of information pertinent to the incident review process;
 5. The name(s) of witnesses to the incident;
 6. The name(s) of witnesses the Applicant intends to call at the PSEBA hearing;
 7. Upon request, any documents filed with the pension board;
 8. Information supporting the PSEBA eligibility requirements, such as a marriage license, birth certificate of dependents, or any other documents or information requested by the Village to determine eligibility; and
 9. Other sources of health insurance benefits currently enrolled in or received by the Applicant and/or family members if the Applicant is deceased.
- C. The PSEBA application must be submitted to the Village Manager or designee in its entirety, although the Applicant shall be allowed to supplement the application before the hearing for good cause.

D. Additional Information/Medical Release Required. In no event shall the Village request medical records, or other information outside of that outlined above in Section B3, unless the Village determines that those records are required to make a determination as to the Applicant's PSEBA eligibility. If the Village makes a valid request, in writing, for additional information, the Applicant shall submit the additional information within thirty (30) days' after receipt of the request.

The Village acknowledges that it may receive medical information pursuant to a valid request for additional information, and that it has access to the employee's workmen's compensation records and medical records. The Medical Release shall authorize the collection of medical information by the Village related to the incident, and 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. Any medical records obtained through the application process shall be maintained in compliance with the Americans with Disabilities Act. If the Village makes a valid request, in writing, for a Medical Release, the Applicant shall provide the completed Medical Release within seven (7) days after receipt of the request. So long as the Applicant provides a requested Medical Release, the failure or inability to obtain medical information from medical providers cannot be used to deny a PSEBA application, or deem it untimely or incomplete.

SECTION THREE - APPLICATION REVIEW BY VILLAGE MANAGER OR DESIGNEE

Upon receipt of a timely, fully completed PSEBA application, the Village Manager or designee shall have sixty (60) days to review the application and supporting documents and make an initial determination as to whether or not a PSEBA qualification hearing is required.

A. PSEBA Approval. If the Village Manager or designee determines that all PSEBA requirements have been satisfied, the Village Manager or designee may grant the PSEBA benefits without a hearing. Upon such grant, the Applicant will be notified and required to contact the Village Manager or designee within thirty (30) days for benefit explanation and processing.

B. PSEBA Denial. If the Village Manager or designee 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 or designee not later than thirty (30) days after being served with a written notice of initial denial.

C. Request PSEBA Hearing. If the Applicant fails to request a PSEBA qualification hearing within thirty (30) days, the Applicant shall contact the Village

Manager or his designee 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 or designee shall result in a forfeiture of PSEBA benefits.

D. Setting Initial Date. If the Applicant requests an administrative hearing, the Village Manager or designee will appoint a Hearing Officer within thirty (30) days of the request. The Hearing Officer shall set the first date of the administrative hearing within thirty (30) days of being appointed.

SECTION FOUR - ADMINISTRATIVE COMPOSITION

A. Hearing Officer. The Village Manager is authorized to appoint a person to hold the position of Hearing Officer for each hearing on PSEBA benefits that shall come before this Village. In making said selection, these qualifications should be considered, at a minimum:

1. The individual's ability to comply with the job requirements set forth herein; and
2. The individual must be an attorney licensed to practice law in the State of Illinois for at least ten (10) years and must have knowledge of and experience in employment and labor law, general civil procedure, the rules of evidence, and administrative practice.

The administrative hearing shall be scheduled and conducted by a Hearing Officer whose authority and limitations are:

B. Authority of the Hearing Officer. The Hearing Officer shall have all of the authorities granted to them under common law relative to the conduct of an administrative hearing, including the authority to:

1. Preside over Village hearings involving PSEBA;
2. Administer oaths;
3. Hear testimony and accept evidence relevant to the issue of eligibility under PSEBA;
4. Issue subpoenas to secure attendance of witnesses and the production of relevant papers or documents upon the request of the parties or their representatives;
5. Rule upon objections to the admissibility of evidence;

6. Preserve and authenticate the record and all exhibits in evidence introduced at the hearing; and
7. Issue a written determination based on the evidence presented at the hearing, including findings of fact, decision, and order.

SECTION FIVE – ADMINISTRATIVE HEARING:

The system of administrative hearings for determining eligibility for benefits under PSEBA shall be initiated as set forth above in Section Three after a PSEBA application and the applicants request for a hearing is denied by the Village Manager or designee. Following such denial, an administrative hearing shall be held to determine the Applicant’s eligibility for PSEBA benefits consistent with the Act and this Ordinance as follows:

- A. Time and Date. Hearing shall be held on the date, time and place established by the Hearing Officer with appropriate notice served upon the Applicant.
- B. Record. The Village shall ensure that all hearings are attended by a certified court reporter and a transcript of all proceedings shall be made by said certified court reporter and a copy be provided to the Applicant within twenty-eight (28) days following the administrative hearing date.

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.

- C. Procedures. The Village and the Applicant shall be entitled to representation by counsel at said administrative hearing and present witnesses, testimony, and documents; may cross-examine witnesses, and may request the issuance of subpoenas to compel the appearance of relevant witnesses or the production of relevant documents.
- D. Evidence. The Illinois Rules of Evidence shall apply unless, by such application, the Hearing Officer determines that application of the 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 Hearing Officer. The Hearing Officer must state on the record their reason for that determination.
- E. Final Determination. A written determination by the Hearing Officer of the Applicant’s eligibility for PSEBA benefits shall constitute a final administrative determination for the purpose of judicial review under the common law writ of certiorari.

- F. Burden of Proof. At any administrative hearing, the Applicant shall have the obligation and burden of proof to establish by a preponderance of the evidence that the Applicant satisfies the requirements set forth in the Act to receive PSEBA benefits.
- G. Administrative Records. All records pertaining to the administrative process shall be held in a separate file under the Applicant's name by the Village.
- H. The Hearing Officer's determination shall be subject to review by the Circuit Court of Cook County as established under the Administrative Procedure Act.

SECTION SIX - HEALTH INSURANCE BENEFITS

Upon qualification for PSEBA benefits, the Applicant, their Spouse, and Dependents shall be entitled to the choice of any health insurance plan available to currently employed full-time Village employees. The Village's health insurance plans may change from time to time. Changes to health insurance plans are subject to any applicable collective bargaining agreements with Village firefighters and police officers, and any applicable duty to bargain under the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.* .

- A. Open Enrollment. Individuals receiving benefits under PSEBA will only be able to change from one plan to another during the Village's Open Enrollment Period.
- B. 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 payable from any other source unless there is another source. If there is another source, the Applicant shall notify the Village of that source within ten (10) business days from that source becoming available to the Applicant or the Applicant's beneficiaries. The Village reserves the right annually to have the benefit recipient provide another affidavit affirming whether other health insurance is available or payable to the Applicant, their spouse and/or their qualifying dependent children. The Village shall submit the affidavit to the recipient by certified mail. The affidavit must be completed and returned to the Village within thirty (30) calendar days of mailing of the written notice from the Village. If the recipient does not complete and return the affidavit within the time required, the Village shall give the recipient an additional written notice by certified mail providing an additional fifteen (15) calendar days from mailing, for the recipient to complete and return the affidavit. Failure to return the affidavit within the time required shall result in the recipient

incurring responsibility for reimbursing the Village for premiums paid during the period the affidavit is due and not filed.

- C. Disclosure of Health Insurance Coverage and Other Information. The Applicant has an ongoing 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 reimbursed by the PSEBA beneficiary for what it would have been credited if it had known about other coverage. Applicant will also cooperate with the Village as necessary to meet the reporting requirements set forth in Section 17 of the Act.
- D. 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.
- E. 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 SEVEN – 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 EIGHT – 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 for procedural matters, specifically excluding statutes of limitations. This Ordinance is not intended to modify or diminish any substantive benefits or substantive due process provided by any other statute, local law, ordinance, resolution, rule or regulation.

SECTION NINE – REPEAL OF ORDINANCE M-2128

Ordinance M-2128 is hereby repealed.

SECTION TEN - EFFECTIVE DATE

This ordinance shall be in full force and effect after its passage, approval, and publication in accordance with law.

PASSED and APPROVED this 28th day of November, 2023.

Village President

ATTEST:

Village Clerk

AYES: _____ NAYS: _____ ABSTENTIONS: _____ ABSENCES: _____