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TESTIMONY IN SUPPORT OF LD 1644
An Act to Improve the Disability Retirement Program
of the Maine Public Employees Retirement System

Good morning, Senator Hickman, Representative Sylvester, and to all of the distinguished members of the Joint Standing Committee on Labor and Housing. My name is Sue Hawes. I am the family caregiver for a current disability retirement beneficiary with Maine Public Employees Retirement System (MPERS). I would like to thank Sen. Miramant for his tireless efforts to improve MPERS disability program and for the opportunity to testify on this bill.

I support LD 1644 and urge the committee to implement all the changes put forth in LD 1644 and add more tightening of the language as I'll explain.

The bill being printed only 5 days ago, with the public hearing today, made a constrained time frame for public response. Therefore, I encourage the committee to read the many personal MPERS disability experiences presented in January 2020 as written public hearing testimony for LD 1978. Although Sen. Miramant's LD 1978 had been carried over during the 129th legislative session, the bill died due to COVID-19.

My testimony addresses further changes I hope will be made to improve the bill:

1. Not just disability determination decisions but any MPERS decision appealed and resulting in a win for the member should result in MPERS paying the cost of the appeal, including the member's attorney fees. Members appeal all kinds of routine MPERS decisions such as decisions regarding the disabled person's earnings and Substantial Gainful Activity, issues around the required Annual Statement of Compensation, denying coverage for life insurance, eligibility for "actively seeking work" status, etc. **MPERS should stand behind all of their decisions subject to administrative appeal and judicial review, not just disability determination decisions.** MPERS appeals extract from the members and their family enormous physical, mental, and financial costs as the testimony from January 2020 shows. Our case demonstrates that MPERS makes adverse decisions consciously and connivingly while anticipating little risk to the system's $15.1 billion

pension fund if the member proves MPERS wrong and ultimately wins. There must be a baked in cost to MPERS making decisions which will not hold up if challenged. Our MPERS experience seems to demonstrate MPERS exploits the disabled in exchange for the job security for the range of public and private beneficiaries making a living off the current system.

2. **MPERS should pay interest on any monetary amount withheld from MPERS pending an appeal and subsequently awarded to the member**. I believe MPERS applies over 7% interest on overpayments charged backed to the disabled member and not paid within 30 days.
3. §17106-B.(3) (B) Regarding the member "may have a representative present at the independent medical examination, who may be a union representative, an attorney or a health care provider of the member's choice," please change the language to **allow any witness or support person of the applicant's choice, not just "a union representative, an attorney or a health care provider."** My family member's disability is neurocognitive and impairs memory and verbal communication. An interview without his caregiver would be untenable and produce invalid results.
4. Sec. 10. 5 MRSA §11007, sub-§3 is amended to provide the court review *de novo* but only for a denial of a disability determination. Any MPERS appeal brought to court should be reviewed *de novo* in my opinion. Our experience demonstrates that **the MPERS team twists the truth to benefit MPERS, actively hides and ignores crucial evidence and inconvenient information favorable to the applicant**. [For some of the details on how this applied in our case, see my written testimony attached to LD 1978 (129th) and my 8/6/2019 letter with attachment sent to Assistant Attorney General Christopher Mann.]
5. In our case, a MPERS Disability Specialist with twenty plus years of experience on the MPERS disability team assigned a *psychiatrist* and an *internist* to evaluate two neurological conditions. Both issued Medical Board reports revealing their lack of qualification. If a Medical Service Provider is selected by MPERS, the law should require, within reason, the matching medical specialty. In our case, **the neurologist on the Medical Board was not selected by MPERS to evaluate the two neurological conditions** under which he applied and the same two medical conditions under which he was ultimately approved—Epilepsy and Major Neurocognitive Disorder due to Epilepsy.

6. I request language in the bill specify that, when hired by MPERS to evaluate the member, **the Medical Service Provider is not authorized to make their own independent medical diagnosis.** In our case, the Medical Board created their own new, non-disabling medical diagnosis for my family member! Furthermore, despite my August 2018 letter sent to her via Certified Mail disputing the new diagnosis, without our knowledge or consent, the MPERS Disability Specialist added the Medical Board's new diagnosis under "Conditions claimed by member" to her September 2018 Administrative Summary Analysis documenting her benefit approval decision. This documentation is created by MPERS and added to the member's file but not disclosed to the member. Had we not appealed the MPERS initial disability approval decision, which violated the member's rights under the Americans with Disabilities Act, we would be unaware of this false information in the member's MPERS record upon which the approval for his disability retirement rested—a record created by MPERS but never disclosed to the member. [Regarding the MPERS initial decision granting approval yet appealed, see details in my written testimony attached to LD 1978 (129th).]
7. **Any records or internal memos MPERS creates and adds to the member's file should be disclosed to the member.** For another example, last summer, my family member went through the biennial disability eligibility review. We received one brief letter that MPERS was "approving the continuation of your disability retirement allowance." When I requested the supporting records upon which continuing eligibility was granted, I was provided with a 2-page document titled "Abbreviated Administrative Summary for Review" that purports to sum up the member's history yet leaves out the most important facts.

It appears to me that the MPERS disability application process is designed and run by MPERS to force members to fight for the benefits for which they qualify. Today, to ensure justice is done and the state's retirement laws followed, the MPERS disability applicant, active disabled retirees, and their advocates must have limitless stamina and financial resources. They must possess deep knowledge about the diagnosed medical condition(s) and enough knowledge about the law to be ready to fight. On behalf of the most vulnerable and members suffering life-altering illness, MPERS must be held accountable to the retirement law MPERS is trusted to administer.

Thank you for your time. I am happy to answer any questions now or in the future.