§ 402. Recovery of disability beneficiaries. a. Once each year the comptroller may, and, upon his application, shall require a retiree on a disability allowance, under the minimum age or period for service retirement elected by him, to undergo a medical examination. Such examination shall be made at the place of residence of such beneficiary, or at any other place mutually agreed upon by the comptroller and such beneficiary. In the event that any such disability beneficiary shall refuse to submit to a medical examination, the pension portion of his retirement allowance, including the pension-providing-for-increased-take-home-pay, shall be discontinued until his withdrawal of such refusal. If such refusal shall continue for one year, all his rights in and to his pension shall be forfeited.

b. The pension, including the pension-providing-for-increased-take-home-pay, of a disability beneficiary shall be reduced in the event that any such disability beneficiary is engaged in a gainful occupation paying more than the difference between his retirement allowance, as it would be without optional modification and if not reduced by the actuarial equivalent of any outstanding loan and if not increased by the actuarial equivalent of any additional contributions, and his final salary. Such reductions shall be to a sum which, when added to an annuity, as so computed, plus the amount so earnable by him, shall equal his final salary. If his earning capacity thereafter changes, his pension may be further altered. Any such altered pension shall not exceed:

1. The pension, including the pension-providing-for-increased-take-home-pay, originally granted to such beneficiary, nor

2. An amount which, when added to an annuity, as so computed, plus the sum earned by him or her, shall equal his or her final salary.

In the case where an optional benefit has been selected, such reduction shall be the same as the reduction would have been without optional modification. Where such reduction is greater than the pension, including the pension-providing-for-increased-take-home-pay, payable

under the option selected, the excess may be paid by the pensioner into the funds of the police and fire retirement system, in which case the benefit due under the option shall be paid as if no reduction had occurred. If such excess is not paid by the pensioner, the benefit otherwise due under the option shall be reduced by the actuarial equivalent of such excess. In no event shall the payment to the funds be greater than the difference between the pension, including the pension-providing-for-increased-take-home-pay, without optional modification and the pension, including the pension-providing-for-increased-take-home-pay, under the option selected. The pension, including the pension-providing-for-increased-take-home-pay of a disability pensioner, shall not be reduced after he or she has attained the mandatory retirement age applicable to him or her or shall have attained the age or performed the period of service specified by applicable law for eligibility for a service retirement benefit.

c. In the event that the comptroller shall determine that a disability beneficiary is able to engage in a gainful occupation, he or she shall, if such beneficiary so requires, certify the name of such beneficiary to the state civil service department or appropriate civil service commission. The state civil service department or such municipal commission shall place the name of such beneficiary, as a preferred eligible, on the appropriate eligible lists prepared by it for positions for which such beneficiary is stated to be qualified in a salary grade not exceeding that from which he or she was last retired. If any such beneficiary shall be offered a position as a result of the placing of his or her name on any such civil service list, the amount of his or her disability pension, including the pension-providing-for-increased-take-home-pay, shall be reduced. Such reduction shall be to an amount which, when added to the amount earned or earnable by him or her in such position, shall not exceed his or her final salary. A disability beneficiary restored to active service shall not be eligible to membership in the police and fire retirement system so long as he or she receives any pension, including the pension-providing-for-increased-take-home-pay.

d. In the event that a disability beneficiary is restored to active service of an employer, at a salary equal to or in excess of his or her final salary, his or her retirement allowance shall cease. Such person thereupon again shall become a member of the police and fire retirement system. He or she thereafter shall contribute to the police and fire retirement system in the same manner as and at the same rate that he or she paid prior to his or her disability retirement. The total service credit, to which he or she was entitled at the time of such retirement, again shall be credited to him or her. Upon his or her subsequent retirement, he or she shall be credited, in addition, with all member service earned by him or her subsequent to his or her last restoration to membership.

e. In the event that a disability retiree is restored to active service of an employer, at a salary less than his or her final salary but equal to or in excess of the current minimum salary for the position from which he or she was last retired for disability, such person, if he or she so elects, shall again become a member of the police and fire retirement system and his or her retirement allowance shall cease. He or she thereafter shall contribute to the police and fire retirement system in the same manner as and at the same rate that he or she paid prior to his or her disability retirement. The total service credit, to which he or she was entitled at the time of such retirement, again shall be credited to him or her. Upon his subsequent retirement, he or she shall be credited, in addition, with all member service earned by him or her subsequent to his or her last restoration to membership.

f. In the case of members who have changed plans prior to the effective date of this subdivision, the plan providing the earliest minimum age or period of service shall be applied.

f-1. Notwithstanding any other provision of this section or any other provision of law, a retiree of any New York state police or fire retirement system on a disability allowance who returns to gainful employment as an elected public official shall continue to receive the full amount of his or her retirement allowance, including the pension-providing-for-increased-take-home-pay.

g. Notwithstanding any other provision of this article, the term "final salary", as used in this section, shall mean the maximum salary or compensation which the retired member currently would be receiving in the position next higher from which he was last retired for disability, if he had not been so retired, provided, however, that if the position from which he was so retired has been abolished, the comptroller, upon the basis of salary or compensation currently paid by the retired member's last employer to persons in similar or comparable positions, shall determine, for the purposes of this section, the maximum amount of salary or compensation which such retired member currently would be receiving in such position.