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San Bernardino County Employees'  
Retirement Association

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Area Benefits  
Applicability SBCERA  
systemwide

## Standard for Determining Whether a Member Is "Incapable" of Gainful Employment

### POLICY NO. 016

## I. Introduction

Section 31740 of the County Employees' Retirement Law (CERL) creates a special supplemental disability benefit (the "supplemental benefit") for general members who are not only disabled for the performance of their duties, but also entirely "incapable of gainful employment." Section 31740 also empowers the Board of Retirement to adopt regulations for the administration of the supplemental benefit. The supplemental benefit is only available in a county that has adopted Article 15.6 of the CERL and withdrawn from the federal Social Security system.

The San Bernardino County Employees' Retirement Association (SBCERA) has defined "gainful employment," for purposes of the administering the supplemental benefit, as "the performance of any service for compensation with the exception of service as a juror or witness in a court proceeding, or service as an election official." This policy is not intended to, and does not, alter the definition of "gainful employment," but is intended to clarify what it means for a member to be "incapable" thereof.

The Board finds that the supplemental benefit was intended by the Legislature as a replacement for benefits foregone when the county withdrew from the federal Social Security system and replaced some of the foregone benefits with section 31740 (in addition to Article 15.6). Accordingly, the Board finds it is appropriate, in determining whether a member is "incapable" of gainful employment, to consider factors similar to those that would guide decisions by the Commissioner of Social Security in administering the parallel federal benefit, eligibility for which is defined at 42 U.S.C. §423. Therefore, the Board adopts the following standard for determining whether a member is "incapable" of gainful employment:

## II. Operating Criteria

An individual shall be determined to be "incapable" of gainful employment only if his or her physical or mental impairment or impairments are of such severity that he or she is not only unable to do his or her previous work, but also cannot, considering age, education, and work experience, engage in any other kind of gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he or she lives, or whether a specific job vacancy exists, or whether he or she would be hired if applying for such work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

The member shall have the burden of proving all elements required for eligibility for the supplemental benefit and such burden commences at the time the member applies for a disability retirement.

In applying these criteria, the Board may seek guidance from, but shall not be bound by, regulations, case law, administrative decisions, and other authorities interpreting and applying section 423 of Title 42 of the United States Code.

### Approval Signatures

Step Description	Approver	Date
Chief Executive Officer Review	Debby Cherney: Chief Executive Officer	Pending
Chief Counsel Review	Barbara Hannah: Chief Counsel	5/8/2025
	Barbara Hannah: Chief Counsel	5/8/2025

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### Applicability

SBCERA, SBCERA Internal