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credit for all periods before the annuitant's 62nd birthday during which he or she was entitled to an annuity under this part. The average pay used in computing the annuity under 5 U.S.C. 8415 is adjusted by all cost-of-living increases effective under 5 U.S.C. 8462(b) during the period the annuitant was receiving the disability annuity under this part.

Subpart D—Termination and Reinstatement of Disability Annuity

§ 844.401 Recovery from disability.

(a) Each annuitant receiving disability annuity from the Fund shall be examined under the direction of OPM at the end of one year from the date of disability retirement and annually thereafter until the annuitant becomes 60 years of age unless the disability is found by OPM to be permanent in character. OPM may order a medical or other examination at any time to determine the facts relative to the nature and degree of disability of the annuitant. Failure to submit to reexamination shall result in suspension of annuity.

(b) A disability annuitant may request medical reevaluation under the provisions of this section at any time. OPM may reevaluate the medical condition of disability annuitants age 60 or over only on their own request.

(c) *Recovery based on medical or other documentation.* When OPM determines on the basis of medical documentation or other evidence that a disability annuitant has recovered from the disability, OPM will terminate the annuity effective on the first day of the month beginning 1 year after the date of the medical documentation or other evidence showing recovery. If an agency reemploys a disability annuitant who has been found recovered at any grade or rate of pay within the 1-year period pending termination of the disability annuity under this paragraph, OPM will terminate the annuity effective on the date of reemployment.

(d) *Recovery based on reemployment by the Federal Government.* Reemployment by an agency at any time before age 60 is evidence of recovery if the reemployment is under an appointment not limited to a year or less, at the same or higher grade or pay level as the position from which the disability annuitant retired. The new position must be full-time unless the position the disability annuitant occupied immediately before retirement was less than full-time, in which case the new position must have a work schedule of no less time than that of the position from which the disability annuitant retired. In this instance, OPM needs no medical documentation to find the annuitant recovered. Disability annuity payments will terminate effective on the first day of the month following the month in which the recovery finding is made under this paragraph.

§ 844.402 Restoration of earning capacity.

(a) *Earning capacity determinations.* If a disability annuitant is under age 60 on December 31 of any calendar year and his or her income from wages or self-employment or both during that calendar year equals at least 80 percent of the current rate of basic pay of the position occupied immediately before retirement, the annuitant's earning capacity is considered to be restored. The disability annuity will terminate on the June 30 after the end of the calendar year in which earning capacity is restored.

(b) *Current rate of basic pay for the position occupied immediately before retirement.* (1) A disability annuitant's income for a calendar year is compared to the gross annual rate of basic pay in effect on December 31 of that year for the position occupied immediately before retirement. The income limitation for most disability annuitants is based on the rate for the grade and step that reflects the total amount of basic pay (both the grade and step and any additional basic pay) in effect on the date of separation from the agency for disability retirement. Additional basic pay is included subject to the premium pay restrictions of 5 U.S.C. 5545 (c)(1) and (c)(2).

(2) In the case of an annuitant whose basic pay rate on the date determined under paragraph (b)(1) of this section did not match a specific grade and step in the pay schedule:

(i) For those retiring from a Senior Executive Service position, a merit pay