

NO. 2006-SA-00841

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**IN THE SUPREME COURT OF MISSISSIPPI**

SHERYL STEVISON

APPELLANT

VS.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
OF MISSISSIPPI

APPELLEE

**REPLY BRIEF OF APPELLANT**

*ORAL ARGUMENT REQUESTED*

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## **REPLY BRIEF OF APPELLANT**

### **STATEMENT OF THE CASE**

Appellant would rely on such statement contained in her original brief

### **STATEMENT OF THE FACTS**

Appellant would rely on such statement of facts contained in her original brief.

### **REPLY TO APPELLEE'S ARGUMENTS**

1. **Appellant Sheryl Stevison would reply that the argument of Appellee Public Employees' Retirement System fails to contradict the opinions of Stevison's treating physicians and incorrectly argues that PERS has the "responsibility of examining assessments of medical personnel and determining which ones should be relied upon in making its decision."**

Stevison's treating physicians gave detailed reports on PERS forms that she was disabled from her job as a teaching assistant. First, Dr. M. S. Tynes on October 7, 2002, indicated on PERS form "Statement of Examining Physician" that Stevison had Sjogren's syndrome, fibromyalgia, piriformis syndrome with depression, with poor prognosis and had restrictions of "minimal physical activity". (R 203, Re 18, Tab 6). He added "I don't see how she would be able to perform this duty [teacher's assistant] due to her pain and fatigue plus her depression is also significant." (R 68, RE 29, Tab 10).

Hattiesburg rheumatologist Dr. David I. Weiss found Stevison to have left hip pain with possible radicular component with prominent left trochanteric bursitis. (R 198, RE 16, Tab 5) and further found her to have "chronic low back/sacroiliac pain of unclear etiology. Low titer ANA without features of a connective tissue disease." (R 194).

Meridian rheumatologist Dr. Robert Daggett found Stevison to have Sjogren's syndrome and muscle spasm of the piriformis muscle and was given a exercise program and muscle relaxant.

(R 108). After returning on September 10, 2002, Daggett found her to have pain in her joints, wrist and ankles and describes her pain as flu type symptoms with achiness all over. (R 109).

However, PERS argues that legal decisions give them unprecedented authority to merely reject the reports of treating physicians of claimants like Stevison.

Stevison would argue that PERS has clearly failed to follow numerous decisions that state that disability cannot be denied in the face of the opinions of numerous treating physicians, particularly when PERS has failed to employ an independent medical examiner as it did in Stevison's case.

Again, in *Marquez v. PERS*, 774 So. 2d 421 (Miss. 2001) the Supreme Court noted that

“PERS put forth no controverting evidence in the face of various diagnoses made by various credible doctors. When medical evidence and testimony given by Marquez is contrasted with PERS' rationale for denial of benefits, the evidence supporting PERS' decision to deny benefits appears insubstantial.” 74 So. 2d 421 at 429.

The Mississippi Court of Appeals in *Public Employees' Retirement System v. Ocenious Thomas*, 809 So. 2d 690 (Miss. App. 2001) announced PERS was not entitled to reject evidence when no “contrary view of that evidence was offered”.

Stevison would argue in reply that numerous court decisions of the Court of Appeals do not give PERS the unfettered discretion to ignore detailed opinions of treating physicians when it has taken no steps to obtain medical evidence of its own.

Stevison would assert that she has put forth credible medical diagnoses by licensed medical specialists in the State of Mississippi and did so while representing herself. PERS failed to send her to a physician of their choice, opting for an FCE which proved that Stevison was suffering great pain associated with her numerous medical problems.

Stevison again would contend substantial evidence does not support PERS' denial of her application for disability retirement and the Court should reverse and render their decision.

2. Appellee Sheryl Stevison would reply that PERS has not responded to her argument that PERS did not have all of her available medical records and that such resulted in an unfair hearing violative of her due process rights.

As stated in her main brief, House Bill 1148 gave the PERS Disability Appeals Committee the “authority to defer a decision in order to request a medical evaluation or test or additional medical records not previously furnished by the claimant.” Miss. Code Ann. 25-11-120.

In its recommendation, the Disability Appeals Committee noted that Stevison, who was then unrepresented,<sup>1</sup> had seen many physicians and admitted that of “10-plus doctors” they did not have any of the medical records regarding Stevison who was then unrepresented by counsel.

Stevison would again contend that her due process rights to a fair hearing were violated by the Committee’s failure to obtain all of her medical records, failure to order a psychiatric evaluation, particularly when the Social Security Administration in its decision utilized reports from at least two physicians who found her to suffering “major depression” and a “mood disorder”.<sup>2</sup>

The Mississippi Supreme Court in *Dean v. Public Employees’ Retirement System*, 797 So. 2d 830 (Miss. 2000) stated that “Administrative hearings should be conducted in a fair and impartial manner, free from any suspicion or prejudice or unfairness. *McFadden*, 735 So. 2d at 158.” See also *Burns v. Public Employees’ Retirement System*, 748 So. 2d 181 (Miss. App.

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<sup>1</sup>Stevison would again assert that PERS procures the medical records for claimants. PERS utilizes Form 7 for physicians to fill out. See footnote 2 regarding such forms in *Freeman v. PERS*, 822 So. 2d 274 (Miss. 2002) at 280. Additionally, Stevison would assert that PERS procures claimant’s medical records and prepares the file.

<sup>2</sup> See copy of decision of Administrative Law Judge K. M. Latshaw of the Hattiesburg, Mississippi Office of Hearings and Appeals of the Social Security Administration entered April 29, 2004 finding Stevison to be disabled beginning May 31, 2002. Contained therein are reference to reports by Dr. Andrew Bishop, a Jackson psychiatrist who found Stevison to suffer “major depression” and Dr. Shannon Johnson who found Stevison to have “mood disorder” and a “global functioning score of 60 which is considered moderate symptoms”. The foregoing facts meet the criteria for judicial notice since they are not subject to reasonable dispute, being both generally know within the territorial jurisdiction of the Board of Trustees of PERS and of this Court and are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, *Poole v. Poole*, 701 So 2d 813 (Miss. 1997).

1999).

Stevision would contend that PERS in its rebuttal brief never responds to PERS' failure to procure all of her medical records and psychiatric reports and whether or not such **lack** of medical reports can be substantial evidence to support PERS' decision. Stevision would again argue that it cannot and that the failure to use their statutory authority to obtain such records is a violation of her due process rights to a fair hearing, particularly when she was obviously ill and unrepresented by counsel at her hearing.

Stevision would again alternatively urge the Court to reverse and remand her case to PERS for a fair hearing for PERS to obtain all of her medical records, order any psychiatric examination it may need, and the psychiatric records contained in her Social Security disability case.

### **CONCLUSION**

The Circuit Court should reverse and render the decision of PERS denying Stevision disability benefits or alternatively, reverse and remand her case for a new hearing.

Respectfully submitted,

Sheryl Stevison, Appellant

BY   
GEORGE S. LUTER, Her Attorney

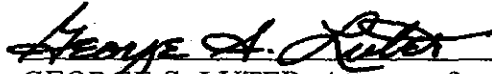
**CERTIFICATE OF SERVICE**

I, George S. Luter, attorney for Appellant, hereby certify that I have hand delivered a copy of the foregoing Reply Brief of Appellant to the following:

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SO CERTIFIED this the 22nd day of January, 2007.



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