

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

[State ex rel.] Lisa Maxwell,	:	
Relator,	:	
v.	:	No. 08AP-597
State Teachers Retirement System of Ohio Disability Review Panel,	:	(REGULAR CALENDAR)
Respondent.	:	
	:	

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D E C I S I O N

Rendered on September 1, 2009

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*Tayfel & Associates, and Eric W. Tayfel, for relator.*

*Richard Cordray, Attorney General, and John E. Patterson,  
for respondent.*

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IN MANDAMUS

CONNOR, J.

{¶1} Relator, Lisa Maxwell, commenced this original action requesting a writ of mandamus ordering respondent, State Teachers Retirement Board ("STRB"), to either grant her disability retirement benefits or order STRB to vacate its order denying relator benefits and hold another hearing on the matter.

{¶2} This court referred the matter to a magistrate pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision,

including findings of fact and conclusions of law, which is appended to this decision. In the decision, the magistrate recommended that this court deny relator's request for a writ of mandamus. No objections have been filed to the magistrate's decision.

{¶3} Finding no error of law or other defect on the face of the magistrate's decision and after an independent review of the evidence, we adopt the decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the appended decision, the requested writ of mandamus is denied.

*Writ of mandamus denied.*

KLATT and TYACK, JJ., concur.

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**A P P E N D I X**

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[State ex rel.] Lisa Maxwell,	:	
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Relator,	:	
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v.	:	No. 08AP-597
	:	
State Teachers Retirement System	:	(REGULAR CALENDAR)
of Ohio Disability Review Panel,	:	
	:	
Respondent.	:	
	:	

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M A G I S T R A T E ' S   D E C I S I O N

Rendered on March 17, 2009

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*Tayfel & Associates, and Eric W. Tayfel, for relator.*

*Richard Cordray, Attorney General, and John E. Patterson,*  
for respondent.

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IN MANDAMUS

{¶4} Relator, Lisa Maxwell, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, State Teachers Retirement Board ("STRB"), to either grant her disability retirement benefits or order STRB to vacate its denial of her benefits and order STRB to hold another hearing on the matter.

Findings of Fact:

{¶5} 1. In May 2007, relator filed an application for disability benefits with State Teachers Retirement System of Ohio ("STRS"). Relator supported her application with copies of office notes from her treating physician Ghassan Abdallah, M.D. Dr. Abdallah diagnosed relator as suffering from "Anxiety [Disorder] / Depression / 'Nervous Breakdown.' " In his office notes from February 26 and March 20, 2007, Dr. Abdallah indicated that relator told him that she was at the edge of a nervous breakdown; her job was getting to her; she felt a lot of pressure and stress and was afraid she was going to have a heart attack; she felt she was slipping into a depression; and she suffers from chest pains, palpitations, vomiting and diarrhea. In March, relator informed Dr. Abdallah that she was experiencing an increase in migraines, insomnia, and in what she believed were small strokes. Dr. Abdallah noted that relator was still able to take great care of her young son. Dr. Abdallah prescribed Lexapro and Xanax and indicated that relator might need counseling.

{¶6} 2. On June 13, 2007, relator was examined by Joel S. Steinberg, M.D., on behalf of STRS. In the history portion of his report, he indicated that relator admitted that she often did not take her medications. Dr. Steinberg identified the records which he reviewed and noted the additional records brought to him by relator. Thereafter, Dr. Steinberg administered several different tests to relator. The results of the tests indicated that relator had exaggeration or malingering issues and Dr. Steinberg concluded that there was significant doubt as to relator's credibility. Dr. Steinberg concluded as follows:

\* \* \* Ordinarily my response to a case such as Ms. Maxwell's circumstances would be to conclude that it is impossible to reach a psychiatric conclusion with so much deception. \* \* \*

That is to say, then, of the five tests that could be used to determine whether or not there was some sort of deception or exaggeration going on, all five of them demonstrated that there was. \* \* \*

It is well-known and has long been established that the history offered by a patient is one of the most important aspects of considering and making a diagnosis in all specialties of medicine. In psychiatry, history is even more important than in any of the other branches, because in psychiatry there are no equivalents of laboratory studies, x-rays, MRI's, or CAT scans. There are no truly objective tests that can confirm or exclude diagnostic considerations. When the history is of dubious value, the diagnostic conclusions are also dubious. They run in parallel. The more dubious the nature of the history offered, the more dubious any diagnostic conclusion must be.

\* \* \*

I cannot conclude that Ms. Maxwell is disabled.

\* \* \* I hereby certify that, in my opinion, the applicant is not considered to be permanently or presumed to be permanently (12 continuous months) incapacitated for the performance of duty, and that she should not be retired.

(Emphasis sic.)

{¶7} 3. Relator's application was reviewed by doctors on the STRB. Drs. Jeffery C. Hutzler and Stephen F. Pariser both concluded that relator was not permanently incapacitated from the performance of her job. Dr. Barry Friedman concluded that relator's case was difficult and recommended either discussion at a conference or that a second psychiatric opinion should be obtained.

{¶8} 4. A second psychiatric evaluation was performed on September 5, 2007 by Joy Stankowski, M.D. Dr. Stankowski identified the records which she reviewed and set forth the history as presented by relator. According to Dr. Stankowski's report, relator

indicated that she has been in denial about her condition her entire life and that she has not seen a counselor or a psychiatrist recently. Instead, relator indicated that she continued to see her family physician who had prescribed her Lexapro and Xanax. She indicated that Dr. Abdallah wanted her to see a psychiatrist, but that she had not been able to get an appointment with one yet. Dr. Stankowski also noted that relator indicated that Dr. Abdallah had recommended that she take a leave of absence from her job from March through June; however, relator did not take the leave but resigned on March 15, 2007. Dr. Stankowski diagnosed relator with generalized anxiety disorder because she appears to worry constantly regardless of her actual life circumstances. Dr. Stankowski also diagnosed panic disorder based on relator's description of her recurrent panic attacks. Dr. Stankowski considered the diagnosis of major depressive disorder; however, it was unclear how those symptoms related to or differed from her anxiety disorders. Dr. Stankowski considered diagnosing relator with malingering because of inconsistencies provided in her history and presentation. For example, relator indicated that she had significant difficulty accomplishing basic activities of daily living, yet she appeared at the exam with make-up, painted nails, and highlighted hair, suggesting that she is capable of keeping up her appearance more than she described. Dr. Stankowski also noted that relator was unable to provide details of events when pressed for specifics. For example, relator could not provide any details regarding why she chose to resign from work when her family physician had arranged medical leave for her and, although relator indicated that she had received treatment for mental health, she could not report many details. Lastly, Dr. Stankowski noted that relator indicated that she has no control over her

anxiety; however, she also stated that she has been completely able to hide her illness from her son. Dr. Stankowski concluded:

Given these difficulties, it is my opinion with reasonable medical certainty that more evidence regarding Ms. Maxwell's distress, functioning, and treatment progress would be helpful. I therefore recommend that STRS postpone disability determination for six months. At that time, reevaluation of Ms. Maxwell, as well as evidence of her treatment and symptoms progress, would be appropriate.

{¶9} 5. Following a special conference of the medical review board, it was determined that relator's application for disability should be denied.

{¶10} 6. Relator appealed STRB's denial of her application for disability benefits.

{¶11} 7. In a letter dated January 3, 2008, the procedures involved relative to relator's appeal were explained and relator was notified that January 28, 2008 was the deadline for submitting any additional medical evidence in support of her appeal. The letter provided further:

**STRS Ohio strictly enforces all deadlines associated with appeals and requests for delays. Additional written information supporting your appeal or written request for delay must be received by STRS Ohio by the deadline date set forth above. A faxed letter received on or before the deadline date will be accepted. Any delay requested beyond the stated deadlines will not be honored. Any information provided to STRS Ohio after the stated deadlines will not be considered and will be returned to you.**

(Emphasis sic.)

{¶12} 8. In support of her appeal, relator submitted an evaluation performed by clinical psychologist James M. Medling, Ph.D., and approximately 200 pages of medical records in 2001. In his report, Dr. Medling began by providing explanations for the

incorrect conclusions reached by Drs. Steinberg and Stankowski. Specifically, Dr. Medling indicated that relator was angry with Dr. Steinberg at the end of his clinical interview and, in an effort to get back at him, randomly answered all the questions on the tests he administered. With regard to Dr. Stankowski's statements regarding relator's dress/hygiene and her ability to hide her disability from her son, Dr. Medling indicated that relator wore sweatpants and sandals to her interview with Dr. Stankowski and that she had not bathed in two days and was not wearing make-up. Dr. Medling also indicated that neither Dr. Steinberg nor Dr. Stankowski reviewed the multitude of records from Kaiser Permanente. Those specific records provide additional psychological information dating back as early as 1995. A review of those records indicated that relator suffered from panic disorder, depression, and panic attacks for a number of years and has been taking Xanax since the 1990s. Many of those records indicated that relator was having relationship issues with men, including boyfriends and her husband.

{¶13} 9. Dr. Medling diagnosed relator with generalized anxiety disorder, post traumatic stress disorder, and major depression, recurrent, severe. He also indicated that she had a paranoid personality disorder, avoidant personality disorder with depressive personality traits and schizotypal personality features. He concluded that she had serious symptoms which impaired her social and occupational functioning. Dr. Medling concluded, in pertinent part, as follows:

Ms. Maxwell was functioning effectively as an assistant principle [sic] with the CMSB at the time of her promotion to principle [sic] in 2004.

Ms. Maxwell began experiencing levels of stress that were aggravated between 2004-7 in her role of principle [sic] at



the McKinley School as she attempted to institute change into a dysfunctional school system.

Work related stress activated and aggravated memories of a horrific childhood and adolescence marked by abuse and neglect.

Despite these difficulties Ms. Maxwell attempted to function as an "agent of change" within her role as principle [sic].

Over time Ms. Maxwell's unrelieved symptoms were aggravated to critical levels until she experienced a psychotic episode in 3/07 that forced her resignation.

Ms. Maxwell continues to recover from this episode and requires both psychological and psychiatric treatment.

\* \* \*

The above noted diagnoses renders Ms. Maxwell unable to perform her job duties of principle [sic], assistant principle [sic], and teacher.

{¶14} Dr. Medling concluded that relator was permanently (12 continuous months) incapacitated from performing her duties as a principal.

{¶15} 10. By letter dated January 29, 2008, relator was notified as follows:

Information relative to your disability application was received.

Following a review of your case and the new medical data submitted, the Medical Review Board requested the additional information be sent to Drs. Joel Steinberg and Joy Stankowski for their comments. Therefore, your case will not be presented to the Disability Review Panel on February 13, 2008 and no action will be taken on your case at the February 15, 2008 Board meeting.

We will contact you after Drs. Joel Steinberg and Joy Stankowski submit their responses.

**The deadline to submit additional information was January 28, 2008; therefore, no new medical information**

**may be submitted. Written information or requests received by STRS Ohio after the stated deadlines will not be considered and will be returned to you.**

(Emphases sic.)

{¶16} 11. Dr. Steinberg responded to his review of the additional medical information submitted by relator in a letter dated February 10, 2008. First, Dr. Steinberg identified the evidence newly submitted by relator. Second, Dr. Steinberg reviewed and offered his opinion on the medical evidence including the previously submitted September 10, 2007 report of Dr. Stankowski and the newly submitted report of Dr. Medling. Lastly, Dr. Steinberg explained his reasons for finding that Dr. Medling's report was not convincing. Dr. Steinberg also offered to see relator again or indicated that he would recommend a competent forensic psychiatrist to perform a new evaluation.

{¶17} 12. Dr. Stankowski responded to the newly submitted medical evidence in a letter dated March 7, 2008. She concluded that, in light of relator's ability to be gainfully employed for years in spite of her chronic anxiety, her opinion regarding disability did not change.

{¶18} 13. On March 11, 2008, relator was provided the following additional information relative to her appeal:

Information relative to your appeal has been received from Drs. Joel Steinberg and Joy Stankowski.

All medical reports and the information referenced above were evaluated. After thorough evaluation, the Medical Review Board did not find substantial evidence contrary to the previous decision.

The Disability Review Panel will evaluate your appeal on March 26, 2008. The Disability Review Panel will submit a

recommendation to the Retirement Board. You will receive notice of the Board's official action.

Your attorney's personal appearance has been scheduled. We will notify you and your attorney of the exact time at a later date.

**The deadline to submit additional medical information was January 28, 2008; therefore, no new medical information may be submitted. Written information or requests received by STRS Ohio after the stated deadlines will not be considered and will be returned to you.**

(Emphasis sic.)

{¶19} 14. By letter dated March 12, 2008, relator was notified that the time of her March 26, 2008 hearing would be 11:00 a.m. and that 30 minutes had been allotted for relator's representative to present her appeal. Further, she was informed that an audio recording of the hearing would be made and that she could request a copy of that recording. Lastly, this letter included the following paragraph:

The deadline to submit additional information was March 10, 2008; therefore, no new medical information may be submitted. **STRS Ohio strictly enforces all deadlines associated with appeals and requests for delays. Written information provided to STRS Ohio after the stated deadlines will not be considered and will be returned.**

(Emphasis sic.) (Relator had been informed that January 28, 2008 was the deadline for the submission of her additional medical evidence in the letter sent to her on January 3, 2008.)

{¶20} 15. After considering the entire record, STRB concluded that relator was not disabled.

{¶21} 16. Thereafter, relator filed the instant mandamus action in this court.

Conclusions of Law:

{¶22} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶23} Pursuant to R.C. 3307.39, the determination of whether a member of STRS is entitled to disability retirement benefits is solely within the province of the retirement board. *State ex rel. McMaster v. School Emp. Retirement Sys.* (1994), 69 Ohio St.3d 130. However, a determination by the retirement board that an applicant is not entitled to disability retirement benefits is subject to review by mandamus, which may also be utilized to correct any other abuse of discretion in the proceedings. *Id.*

{¶24} In this mandamus action, relator argues that STRB abused its discretion by requiring her to abide by the time guidelines set forth in the Ohio Administrative Code while not applying those guidelines to themselves. Relator also argues that STRB gave preference to its own doctors and, in conjunction with her first argument, her doctors were not provided the opportunity to respond to Dr. Steinberg's second report. Lastly, relator argues that by not being permitted to respond to the new medical evidence obtained by STRB, she was denied due process of law. For the reasons that follow, the magistrate recommends that this court deny relator's request for a writ of mandamus.

{¶25} R.C. 3307.62 provides for disability coverage under STRS and provides, in pertinent part, as follows:

(A) The state teachers retirement system shall provide disability coverage to each member participating in the plan \* \* \* who has at least five years of total service credit.

\* \* \*

(C) Medical examination of the member shall be conducted by a competent, disinterested physician or physicians selected by the board to determine whether the member is mentally or physically incapacitated for the performance of duty by a disabling condition, either permanent or presumed to be permanent for twelve continuous months following the filing of an application.

\* \* \*

(E) If the physician or physicians determine that the member qualifies for a disability benefit, the board concurs with the determination, and the member agrees to medical treatment as specified in division (G) of this section, the member shall receive a disability benefit under section 3307.63 or 3307.631 of the Revised Code. If such physician or physicians determine that the member does not qualify for a disability benefit, the report of the examiner or examiners shall be evaluated by a board of medical review composed of three physicians appointed by the retirement board.

(F) The state teachers retirement board shall render an order determining whether or not the applicant shall be granted a disability benefit. Notification to the applicant shall be issued, and upon the request of an applicant who is denied a disability benefit, a hearing or appeal relative to such order shall be conducted in accordance with procedures established by the retirement board.

{¶26} The Ohio Administrative Code provides rules for the processing of disability applications.

Ohio Adm.Code 3307:1-7-03 provides in part:

Each applicant or recipient shall be responsible for providing medical information needed by the retirement system and reporting for medical examination, as follows:

(A) Information or reports from an attending physician[.]

(B) The retirement system shall provide written notice of the independent medical examiners who will conduct medical examinations and testing.

Ohio Adm.Code 3307:1-7-05 provides, in pertinent part:

The following procedures are hereby established for the appeal of any denial or termination of benefits.

(A) At least seven days before a recommendation is presented to the retirement board, written notification shall be issued to the applicant or recipient.

(1) No additional medical evidence shall be considered once written notification has been issued to an applicant or recipient pursuant to paragraph (A) of this rule.

(2) Should the retirement system receive additional medical evidence after written notification has been issued to an applicant or recipient pursuant to paragraph (A) of this rule, the evidence shall be held and included as part of the appeal documentation if a right to appeal is exercised as set forth in paragraph (B)(3) of this rule. Should a right to an appeal not be exercised as set forth in paragraph (B)(3) of this rule, the evidence will be returned to the applicant or recipient.

(B) Following board action terminating or denying disability benefits:

(1) The applicant or recipient will be informed in writing of the action taken by the board. Notification shall include:

(a) Confirmation that the applicant or recipient has the right to present additional medical evidence not previously considered by the independent medical examiner or the medical review board.

\* \* \*

(3) Procedure for exercising right to appeal:

(a) Written notice of appeal accompanied by a statement from the applicant or recipient, his or her counsel and/or

attending physician that an appeal will be based on evidence contrary to the findings of the independent medical examiners must be filed with the retirement system within fifteen days of receipt of notification of board action.

\* \* \*

(4) Scope and procedure upon appeal:

(a) The applicant or recipient may appear in person, be represented by counsel and/or an attending physician, or may present the information, positions, contentions and arguments in writing.

\* \* \*

(d) The purpose of the hearing upon appeal shall be for the applicant or recipient to present objective and pertinent evidence to the board or its designee(s) substantiating the claim that the eligibility requirements of section 3307.62 of the Revised Code have been met and that the applicant or recipient is medically incapacitated from the performance of regular duties by a mental or physical condition that is permanent or presumed to be permanent.

\* \* \*

(f) Upon consideration of the record on appeal and the information, positions, contentions and arguments of the applicant or recipient, the retirement board may direct further examination or testing by independent medical examiners and may return a record for review and recommendation by the medical review board.

(g) When the retirement board is satisfied that the record before it is complete and has completed its deliberations, it may affirm, disaffirm or modify its prior action by a majority vote. Written notice of such action shall be given to the applicant or recipient.

{¶27} In arguing that STRB abused its discretion by obtaining additional medical reports after she had met the deadline for submitting her medical reports, relator ignores Ohio Adm.Code 3307:1-7-05(B)(4)(f), which provides that when considering the record on

appeal and the information submitted by the applicant, the retirement board may direct further examination or testing by independent medical examiners and may return a record for review and recommendation by the medical review board. In the present case, that is exactly what STRB did. Specifically, Dr. Friedman had reviewed the medical evidence in the record and indicated that he would consider placing relator on permanent disability for one year during which time psychiatric care would be required along with follow-up reports submitted by the treating psychiatrist(s). The Ohio Revised Code does provide a procedure for STRB to grant disability benefits provided that the applicant pursue a specific course of medical treatment. Thereafter, relator presented her additional medical evidence. Specifically, she submitted the report of Dr. Medling. STRB chose to provide Drs. Steinberg and Stankowski with a copy of Dr. Medling's report as well as all of the additional medical evidence which relator had submitted to STRB in support of her appeal. Thereafter, Drs. Steinberg and Stankowski prepared reports indicating that the additional evidence did not cause them to change their opinions. In this case, relator was not sent for an additional medical examination as STRB could have required under Ohio Adm.Code 3307:1-7-05(B)(4)(f). Instead, in an effort to have the independent medical examiners consider all the new evidence which relator submitted on appeal (approximately 200 pages of additional evidence), STRB requested that Drs. Steinberg and Stankowski review that evidence and prepare additional reports. Ohio Adm.Code 3307:1-7-05 permits STRB to do this. By authorizing STRB to obtain additional examinations or reports, Ohio Adm.Code 3307:1-7-05(B)(4)(f) ensures that all the medical evidence is considered and evaluated.



{¶28} As indicated in the findings of fact, relator was informed on three occasions that the deadline for submitting additional medical evidence was January 28, 2008. This information was conveyed to her in letters dated January 3, January 29 and March 11, 2008. In response, relator submitted the report of Dr. Medling and additional records. Relator argues that STRB could not obtain additional medical evidence on its own *after* January 28, 2008, because she was not permitted to produce additional medical evidence after January 28, 2008. As stated previously, it was within STRB's discretion to elicit responses from Drs. Steinberg and Stankowski after relator submitted additional medical evidence. If STRB had not requested that the doctors review the additional medical evidence presented by relator, STRB would not have had an independent review based upon all the medical evidence presented by relator. STRB's action did not constitute an abuse of discretion.

{¶29} Relator also points to the March 12, 2008 letter informing her that her hearing was scheduled for March 26, 2008. In that letter, relator was informed that the deadline to submit additional information was March 10, 2008. This is the only reference to this date provided anywhere in the record. All of the other letters indicate that January 28, 2008 was the deadline for relator to present additional medical evidence. The deadline had already passed. Perhaps this is a typographical error, but it in no way deprived relator of her right to present additional medical evidence.

{¶30} Relator also contends that STRB abused its discretion by not allowing Dr. Medling to respond to the responses of Drs. Steinberg and Stankowski to his report. Nothing in the Ohio Revised Code nor the Ohio Administrative Code provides a clear legal right to an applicant to have her doctor reply to the medical evidence. In this case,

Dr. Medling clearly explained why he believed the opinions of Drs. Steinberg and Stankowski were clearly inaccurate. As such, relator did have the opportunity to respond to the initial reports of Drs. Steinberg and Stankowski. The additional reports prepared by Drs. Steinberg and Stankowski were prepared so that the doctors had the opportunity to review the additional medical evidence presented by relator (approximately 200 pages of medical documents) as well as the report of Dr. Medling and then to determine whether or not, in their opinion, relator was incapacitated from the performance of her job for at least 12 months.

{¶31} Lastly, relator attempts to make a due process argument out of the fact that she was not permitted to present medical evidence a third time. Relator presented medical evidence with her initial application for disability retirement benefits. STRB had relator examined by Drs. Steinberg and Stankowski and they issued their reports. Based upon the evidence, STRB indicated that relator's application for disability benefits was going to be denied. Relator filed an appeal and presented additional medical evidence consisting of approximately 200 pages of additional medical records as well as the report of Dr. Medling. Thereafter, STRB requested Drs. Steinberg and Stankowski review the additional medical evidence presented by relator and they did so. Nothing in this process deprived relator of her due process rights.

{¶32} Based on the foregoing, it is this magistrate's conclusion that this court should deny relator's request for a writ of mandamus.

*/s/ Stephanie Bisca Brooks*  
STEPHANIE BISCA BROOKS  
MAGISTRATE

**NOTICE TO THE PARTIES**

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).