



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location

402 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
02/05/08	SM	Unfavorable

February 5, 2008

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 42 (2008)** – Senator Tony Hill
HB 481 (2008) – Representative Dave Murzin
Relief of Rhonda Hughes

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$100,000 AGAINST ESCAMBIA COUNTY FOR NEGLIGENT MEDICAL CARE PROVIDED TO RHONDA HUGHES IN 2002 BY AN EMERGENCY MEDICAL TECHNICIAN EMPLOYED BY THE COUNTY.

FINDINGS OF FACT:

The claimant, Rhonda Hughes, is 40 years old. She has a long history of medical and psychological problems. She has been diagnosed with dysautonomia, which is a disorder that affects the nervous system and can cause a variety of symptoms, including faintness, dizziness, and confusion. She has also been diagnosed with depression and various personality disorders, and she has a history of abusing pain killers and other drugs (e.g., marijuana).

On September 25, 2002, Ms. Hughes became dizzy and disoriented while shopping at a Wal Mart in Pensacola. The store manager called 911, and an ambulance was dispatched by Escambia County emergency management services. The emergency medical technician (EMT) who assessed Ms. Hughes at the scene decided to administer an injection of Narcatan because it appeared that she was suffering from a drug overdose.

The EMT mistakenly gave Ms. Hughes an injection of Mivacron, which is a paralytic agent. The EMT initially denied giving Ms. Hughes the wrong medication, but he later admitted his mistake. The EMT was subsequently fired by the County.

The Mivacron injection caused Ms. Hughes to go into full cardiopulmonary arrest. She was transported to the hospital emergency room, and CPR was administered. She was diagnosed with a possible anoxic or hypoxic brain injury because she apparently stopped breathing for some period of time during the incident, which deprived her brain of oxygen.

Ms. Hughes testified at the Special Master hearing that she has constant problems with her memory since the incident. She had memory and other cognitive problems prior to the incident, but her treating physicians attribute her current memory problems to the brain injury rather than her pre-existing condition of dysautonomia because cognitive problems are typically transitory, not constant, when related to dysautonomia.

Neuropsychological testing of Ms. Hughes corroborates her claims of memory problems. The tests indicate that her memory functioning is in the “mildly impaired range” and that she has other cognitive deficiencies.

The professionals who conducted the tests -- Dr. Brett Turner and Dr. Kevin Groom -- attributed Ms. Hughes' memory and cognitive problems to her brain injury, even though they did not review Ms. Hughes' extensive history of medical and psychological problems. By contrast, the County's expert, Dr. Barbara Stein, reviewed Ms. Hughes' history and was of the opinion that “numerous non-claim-related factors are contributing to [Ms. Hughes'] ongoing symptom presentation.” Dr. Stein was also of the opinion that Ms. Hughes' “extensive medical and psychiatric history are contributing to her mild cognitive dysfunction,” although she did acknowledge that Ms. Hughes has “some claim-related permanent impairment” (emphasis supplied).

Dr. Stein did not quantify “some” or opine as to how much of Ms. Hughes' permanent impairment is attributable to the

brain injury. Ms. Hughes' treating psychiatrist, Dr. Michael Conrad, was of the opinion that "at least half or more" of her depression and anxiety symptoms are related to the brain injury, rather than the dysautonomia.

Ms. Hughes is on a number of daily medications for her medical and psychological problems. Most of the medications are for problems unrelated to the brain injury, such as her depression and "chronic pain." For example, she takes 60 mg of Methadone daily for pain.

In November 2006, Ms. Hughes was referred to a specialist, Dr. Rick Beach, for recommendations regarding pain management. Dr. Beach identified a number of factors that complicate the implementation of a pain management plan that is less dependent on medications, including Ms. Hughes' history of psychological problems.

Dr. Beach pointed out that Ms. Hughes "appears to have all the risk factors for personality or characterological disorder prior to brain injury," and he identified several issues that warranted further examination, including the possibility that Ms. Hughes was using her condition for "avoidance (of life responsibilities and stresses)", "attention (continued care-taking by family)," and "continued opiate doses (patient with history of opiate abuse in past)." Dr. Beach concluded that until Ms. Hughes resolved her lawsuit with the County, "there may not be much incentive for Ms. Hughes to actively participate in a program that is focuse[d] on wellness and personal responsibility and a program that is designed to reverse any rolls as a victim that a patient may have unknowingly fallen into secondary to their long-term pain condition."

Dr. Stein expressed similar opinions. For example, she opined in her report that Ms. Hughes "is misattributing many of her symptoms to the [County]'s alleged conduct" and that "secondary gain including avoidance of responsibility and stress, attention from caretakers and potential financial remuneration is also present." Dr. Stein also pointed out that Ms. Hughes had no problem remembering many things and that she had "selective recall."

The assessments of Ms. Hughes by Dr. Beach and Dr. Stein are consistent with my observation of her at the Special

Master hearing. Her testimony and the testimony of her mother regarding the extent of her memory problems were generally unpersuasive. Indeed, notwithstanding the fact that the neuropsychological testing showed no signs of malingering (i.e., faking) by Ms. Hughes, I was not persuaded that Ms. Hughes' memory problems and cognitive deficits are as severe as she says they are.

Ms. Hughes lives with her mother, who is a retired school teacher. Ms. Hughes depends upon her mother to oversee her medications, but Ms. Hughes acknowledged that she is capable of performing most activities of daily living (e.g., grooming, cooking, cleaning). Additionally, Ms. Hughes has no problems driving.

Ms. Hughes has not worked since September 2001, which is prior to the incident giving rise to this claim. She stopped working because of her dysautonomia, and she has been declared permanently and totally disabled by the U.S. Social Security Administration. She receives disability payments of approximately \$700 per month, which is her only source of income other than the support that she receives from her mother.

Ms. Hughes is eligible for Medicare as a result of her permanently disabled status, and Medicare is her primary insurance. Ms. Hughes is not currently eligible for Medicaid because she lives with and receives support from her mother.

Ms. Hughes testified that she is still in therapy for her neuropsychological problems, and that she goes to therapy "every 2 or 3 weeks." However, she has not made a serious effort to follow up with Dr. Beach regarding a pain management plan that is less dependent on Methadone.

Dr. Conrad testified in deposition that Ms. Hughes will require daily supervision and care to ensure that she is taking her medications correctly. Ms. Hughes' mother currently performs that role, but Ms. Hughes may have to hire someone to take over that role as her mother gets older. The present value cost of the daily care that Ms. Hughes will need over the course of her life was estimated to be in excess of \$300,000.

Dr. Conrad stated in an affidavit provided at the Special Master hearing that Ms. Hughes will life-long psychiatric care, medication, and counseling due to her brain injury. He also stated that the amount of care and treatment could increase as she aged. The costs of this care and treatment are not included in the \$300,000 referenced above.

Payment of the claim bill will not adversely affect the County or its emergency medical services program. The County provided a letter from its Risk Manager, which states that “at least \$100,000 has been set aside in reserve for payment of a claims bill in favor of Rhonda Hughes.”

LEGAL PROCEEDINGS:

In August 2005, Ms. Hughes filed suit against the County in circuit court in Escambia County. In its answer to the complaint, the County admitted that the EMT was negligent, but denied that Ms. Hughes suffered any permanent injuries as a result of the negligence.

In August 2007, Ms. Hughes and the County entered into a settlement agreement in which the County agreed to pay Ms. Hughes a total of \$200,000. The agreement contemplated an immediate payment of \$100,000, which is the maximum allowed under the sovereign immunity cap, and then a claim bill for the remaining \$100,000. The County agreed not to oppose the claim bill. A Final Consent Judgment incorporating the settlement agreement was entered by the circuit court on August 21, 2007.

The County paid \$100,000, as required by the Final Consent Judgment. Ms. Hughes received \$60,941.53 of that amount; the remainder went to attorney's fees and costs.

Ms. Hughes testified at the Special Master hearing that she put \$50,000 of the initial payment into a “safe” investment account, and that she intends to put “at least \$50,000” of the proceeds of the claim bill into that account. She testified that she intends to use the funds in the account for her future medical needs. She also testified that she intends to use a portion of the claim bill proceeds to buy a car and pay for dental work that she and her mother need.

It is noteworthy that Dr. Beach stated in his report that Ms. Hughes “went down a list” of things that she and her mother were going to do with the settlement proceeds from

the County, including opening an art studio and buying some land in Destin. In her testimony at the Special Master hearing, Ms. Hughes denied making those statements to Dr. Beach.

CLAIMANT'S POSITION:

- The negligence of the County's EMT was the direct and proximate cause of the Ms. Hughes' current memory problems and cognitive deficiencies.
- The settlement agreed to by the parties is reasonable under the circumstances and it should be given full effect by the Legislature.

COUNTY'S POSITION:

- The County does not oppose the bill.

CONCLUSIONS OF LAW:

The EMT owed a duty of care to Ms. Hughes. The EMT breached that duty of care by administering the wrong medication to Ms. Hughes.

The EMT was employed by the County and acting within the scope of his employment at the time of the incident. As a result, the EMT's negligence is attributable to the County.

Ms. Hughes was injured as a result of the negligent medical care provided by the EMT. The medication caused her to go into respiratory arrest, and it is undisputed that at least "some" of Ms. Hughes' memory problems and cognitive deficiencies are attributable to the negligent medical care provided by the EMT. However, Dr. Conrad's opinion that "at least half or more" of Ms. Hughes deficiencies are due to the negligent medical care was unpersuasive in light of her extensive history of psychological and physical problems.

The \$200,000 settlement agreed to by the County was not unreasonable in light of Dr. Stein's opinion that "some" of Ms. Hughes' current condition is attributable to the negligent medical care provided by the EMT. A jury award could easily have exceeded that amount.

That said, in my view, the \$100,000 already paid by the County more than adequately compensates Ms. Hughes for the injuries that she suffered and that she may continue to suffer in the future as a direct result of the negligent medical care provided by the EMT. Simply put, I was not persuaded that the negligent medical care provided by the EMT is a

material contributing cause to Ms. Hughes' current condition in light of her extensive history of medical and psychological problems or that her memory problems and cognitive deficiencies are as bad as she says they are.

LEGISLATIVE HISTORY:

This is the first year that this claim has been presented to the Legislature.

ATTORNEYS' FEES AND LOBBYIST FEES:

The attorney's fees are less than the 25 percent allowed by Section 768.28(8), F.S. The claimant's attorney took only \$20,000 in fees from the initial \$100,000 payment, and she represented at the Special Master hearing that she intends to take no more than \$10,000 in attorney's fees for the claim bill. The lobbyist's fees – 5 percent of the final claim -- are in addition to the attorney's fee. There are no outstanding costs.

If the claim is paid at \$100,000, Ms. Hughes will receive \$85,000, her attorney will receive \$10,000, and the lobbyist will receive \$5,000.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 42 (2008) be reported UNFAVORABLY.

Respectfully submitted,

T. Kent Wetherell
Senate Special Master

cc: Senator Tony Hill
Representative Dave Murzin
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Karen Camechis, House Special Master
Counsel of Record