



PATIENTS' COMPENSATION FUND
OVERSIGHT BOARD
OFFICE OF THE EXECUTIVE DIRECTOR
200 LAFAYETTE STREET, # 600
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LYNN BEAUCOUDRAY, WIFE OF/AND
JAMES KELTY, JR., INDIVIDUALLY
AND ON BEHALF OF THEIR MINOR
CHILD, ANNE MARY KELTY

PATIENT'S COMPENSATION FUND
OVERSIGHT BOARD
-and its-
CLAIMS COMMITTEE

VS.

NO. 94-001

FRED O. BRUMFIELD, M.D., AND
SOUTHERN BAPTIST HOSPITAL, ET AL

FINDINGS AND CONCLUSIONS
(AS AMENDED)

The original Findings and Conclusions are adopted in the Final Decision dated September 1, 1994. By order of Judge Gerald Federoff, Civil District Court, Parish of Orleans, the Final Decision was remanded to the Claims Committee for a Second Administrative Hearing ("Second Hearing"). Following factual discovery, including document exchanges and depositions, the Second Hearing was held on March 2, 1995. The Second Hearing was conducted, as close as practicable, to conform with the procedure used at the original Hearing on July 7, 1994. The Claims Committee has conducted itself consistent with what it understands to be the order of Judge Gerald Federoff, Civil District Court, Parish of Orleans.

The following parties and/or their counsel participated in the Second Hearing:

James Kelty, Jr., Lynn B. Kelty, and the Minor Anne Mary Kelty,
represented by their attorney, Kenneth V. Ward.

The Louisiana Patient's Compensation Fund ("PCF")
represented by its attorneys, George E. Cain, Jr. and Greg A.
Pellegrine.

The Claims Committee consisted of its original members: Dr. Paul
B. Lansing, II, Dr. Ben B. Singletary and Mr. Robert D. Merkel.

Serving as legal counsel for the Claims Committee was Larry M.
Roedel.

Also present and/or participating in the Second Hearing as witnesses were:

Dr. Eduardo Hernandez and Brenda Relle, R.N. as expert
witnesses on behalf of the Keltys; and

Cathy Laufer and Bruce Eichler of the PCF, and Gary Ciardiello,
an expert economic actuary, on behalf of the PCF.

Witnesses were placed under oath prior to giving testimony and all parties were afforded a reasonable opportunity to present evidence, testimony, and argument concerning their respective positions. A recorded transcript was made of the Second Hearing and a copy of that transcript will be made available to any party upon payment to the court reporter of her standard charges.¹

Following completion of the Second Hearing, the Claims Committee met and reached the following Findings and Conclusions (As Amended) for recommendation to the full Oversight Board for its consideration and implementation, subject to judicial review by the appropriate court.

A. Medical Expenses

The Final Decision (Findings and Conclusions) dated September 1, 1994, is adopted and reaffirmed with the following additions:

The Keltys have withdrawn from the Registry of the Civil District Court the original \$15,400 direct payment, plus \$19,320 (reflecting 20% of the \$96,600). The PCF is directed by the Claims Committee to pay the remaining \$77,280 balance into the Registry of the Civil District Court, said amount to be disbursed as ordered by Judge Federoff.

B. Future Medical Expenses

The Final Decision (Findings and Conclusions) in this category is adopted as rendered on September 1, 1994. Anne Mary Kelty remains in need of future medical care; however, her future medical expenses, to the extent shown to be reasonable and medically necessary, should be paid consistent with PCF procedures which govern the payment for other claims under La.R.S. 40:1299.43.

The PCF should not be required to pay rates and amounts that exceed the reasonable charges of the Greenery Center (the "Greenery") in Slidell, Louisiana, the facility into which Anne Mary Kelty was placed for an extended period of time. According to Dr. Hernandez, these rates were \$1000 per day, or less, at that time. Mr. and Mrs. Kelty made a decision, based upon their own personal and emotional attachment to their daughter, to remove Anne Mary Kelty from the Greenery and to keep her at their home, a decision which necessarily carried with it substantially greater charges, rates and amounts for medical care.

Generally, Mr. and Mrs. Kelty should not be allowed, at PCF expense, to duplicate or reproduce the facilities, equipment, and personnel, on an in-home basis, that were readily available at the Greenery and would be included within the periodic rate charged by the Greenery to the PCF. Specifically, the special hospital bed (Kelty Exh. 4), purchased for home use at a price exceeding \$25,000, was readily available for use at the Greenery. This purchase was paid for by the PCF, even though the Claims Committee would have disallowed it, so it is moot. The CareMed charges (Kelty Exh. 5) for equipment purchase or rental (suction pump; vacu-aide; percussor; oxygen equipment; nebulizer; etc.) could be disallowed for the same reason, but are also moot since they were also paid. Accordingly, the PCF is ordered to pay future medical expenses at periodic (daily, weekly, monthly, etc.) rates not to exceed those charged by the Greenery during that period of time in which Anne Mary Kelty was hospitalized for in-patient care. The PCF is not required by the Claims Committee to pay for specialized equipment that duplicates what is available at the Greenery at no extra charge to the Keltys or the PCF.

C. Transportation Charges

The Second Hearing did not produce any new evidence, testimony or information concerning the Keltys' transportation charges or needs. Therefore, the Claims Committee adopts the original Final Decision (Findings and Conclusions), dated September 1, 1994, as to this

¹Classic Court Reporters, Inc. experienced a mechanical problem with their recording equipment used at the Second Hearing. This problem has resulted in a delay in the transcription, but the Claims Committee can no longer wait on the full transcript, and therefore it issues these Findings and Conclusions (As Amended) at this time.

category. Further, the Keltys have withdrawn the amount deposited into the Registry of the Civil District Court for transportation charges.

D. Residential Modifications

The Keltys did not present any additional evidence, testimony or information related to residential modifications. Therefore, the Claims Committee adopts the Final Decision (Findings and Conclusions), dated September 1, 1994, as to this category. Further, the Keltys have withdrawn the amount deposited into the Registry of the Civil District Court by the PCF for residential modifications.

E. Other Supplies

The evidence introduced by the Keltys at the Second Hearing was confusing and unclear as to how long the child was at the Greenery for in-patient care subsequent to the original Hearing on July 7, 1994. What is clear is that the PCF paid the Greenery charges and the child was removed from the Greenery on November 28, 1994 at her parents' choice, which resulted in a discharge note/order from Dr. Hernandez on that date directing 24-hour nursing care. For the reasons set forth in B. Future Medical Expenses, the PCF should pay total charges no greater than the Greenery rates. If the Keltys had not removed their child from the Greenery, the charges for Other Supplies would be part of the daily, weekly or monthly rate paid by the PCF to the Greenery. If the Keltys purchased Other Supplies between July 31, 1994 and November 9, 1994, the actual date that the child entered in the Greenery, these items are to be reimbursed by the PCF to the Keltys for the amount spent, based upon receipts and proper documentation being provided to the PCF.

F. Custodial Care

Much of the evidence, testimony and information introduced at the Second Hearing focused upon the issue of custodial care. On behalf of the Keltys, Dr. Hernandez and Brenda Relle testified in favor of custodial care amounts at rates significantly higher than those compensated by the PCF pursuant to the original Final Decision (Findings and Conclusions), dated September 1, 1994. Specifically, however, Dr. Hernandez and Brenda Relle testified that the PCF rates for custodial care payments resulted in an annual amount of money paid to the Keltys from 1978 to 1994 equal to or greater than the direct cost of hiring two full-time nurses for the minor child. Also, the Keltys have now voluntarily removed their child from the Greenery, which the PCF was ordered to pay, and have taken the child back home, as an emotional decision that carries with it significantly higher nursing charges. The PCF should not be forced to pay higher nursing charges because of a parental decision that was contrary to the direct evidence presented at the original Hearing on July 7, 1994.

In addition, the Claims Committee adopts specific reasons (1) through (7) on Pages 5-6 of its original Final Decision. Further on this subject, Mr. Ciardiello, the expert actuary, testified that payment by the PCF of the custodial rates sought by the Keltys in this case would have a significantly negative monetary impact on the PCF Fund balance which could, in turn, impact the ability of the PCF to pay other claims. As the Claims Committee understands its function, as outlined by statute and by the Supreme Court opinion in Kelty, part of its responsibility is to assure the fiscal soundness and integrity of the Fund. This function does not mean, however, that there will never be a claim approved for custodial care above the \$6.00 per hour rate. Each case must be judged on its own individual merits.

With respect to the Kelty case, for the reasons set forth in the original Final Decision and in the absence of persuasive evidence by the Keltys at the Second Hearing, the Claims Committee does not see a reason to modify its Final Decision in this case. Mr. and Mrs. Kelty have been paid more than \$1.48 million (including interest) for the custodial care of their own daughter, separate and apart from payments that the PCF has made to third parties for care of Anne Kelty. In this case, judging from the facts presented to the Claims Committee, the custodial care award has been reasonable and within the constraints of statutory authority and the Kelty opinion by the Supreme Court.

G. Witness Fees

The Keltys have requested that the PCF pay/reimburse expert witness fees for Dr. Hernandez and Brenda Relle, both of whom testified on behalf of the Keltys at the Second Hearing. The Claims Committee cannot order the PCF to pay these witness fees for the following reasons:

- (1) The testimony given by Dr. Hernandez and Brenda Relle was not persuasive in this case to justify a modification of the Custodial Care award originally made in the September 1, 1994 Final Decision.
- (2) Certain charges submitted by Dr. Hernandez concern his preparation time, consultation with the Keltys and travel time, and was not actual medical care or treatment. The Claims Committee does not have specific statutory or case law authority to order payment of such charges. Those charges should be the responsibility of the Keltys absent a contrary order by Judge Federoff of the Civil District Court.

SUMMARY


Once the Findings and Conclusions (As Amended) are final, as adopted by the Oversight Board, the PCF shall pay the \$77,280 balance of Medical Expenses into the Registry of the Civil District Court to be disbursed as ordered by Judge Federoff; the PCF shall pay/reimburse Medical Expenses on a going-forward basis equal to, but not exceeding, what the PCF would have paid for long-term care in the Greenery; the PCF shall pay the Other Supplies amount based upon submission of receipt and proper documentation, and the PCF is not to pay witness fees without a court order to do so. Both the Keltys and the PCF may seek review of this Amended Final Decision as provided by law.

CLAIMS COMMITTEE:

By:


PAUL B. LANSING, II, M.D.

By:


BEN B. SINGLETARY, M.D.

By:


ROBERT D. MERKEL

Date: June 13, 1995