



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/2/08	SM	Fav/1 amendment

February 2, 2008

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

Re: **SB 46 (2008)** – Senator Al Lawson
HB 443 (2008) – Representative Marti Coley
Relief of Marissa Amora

SPECIAL MASTER'S FINAL REPORT

THIS IS A JURY VERDICT BASED CLAIM BILL THAT MISTAKENLY AUTHORIZES THE PAYMENT OF OVER \$35 MILLION BUT APPROPRIATES THE SUM OF \$26,849,849.08 TO COMPENSATE MARISSA AMORA FOR SEVERE TRAUMATIC BRAIN AND SPINAL INJURIES CAUSED, IN LARGE PART, BY THE NEGLIGENCE OF THE DEPARTMENT OF CHILDREN AND FAMILIES THAT IS UNCONTESTED AS TO LIABILITY AND FOR WHICH THE DEPARTMENT HAS NOT REPORTED THAT IT HAS TAKEN ANY POSITION ON THE REASONABLENESS OF THE AMOUNT OF COMPENSATION.

FINDINGS OF FACT:

Claimant's Hospitalizations and DCF Investigations

Marissa Amora was born on November 19, 1998, and named Moesha Sylencieux. In 2000, she lived with her birth mother and her mother's boyfriend in Lake Worth. On November 8, 2000, her mother took her to the emergency room of Bethesda Memorial Hospital in Boynton Beach, and told hospital staff that her daughter had fallen from a standing position and, as a result, could not walk. Marissa was also found to be anemic and dehydrated.

After an MRI showed a spinal cord mass that was possibly malignant, Marissa was transferred to Miami Children's Hospital ("MCH") for further tests. During the following month, Marissa underwent a biopsy of the spinal mass, a bone marrow biopsy, an MRI of her brain, and infectious disease tests, all of which were negative and showed no malignancy. A bone scan revealed a healing fracture of her collarbone.

While Marissa was at MCH, nurses and social workers documented incidents that gave rise to concerns of possible neglect and abuse by her mother. Marissa was to have been discharged on December 8, but her mother failed to come to get her. On the following day, a hospital social worker made an abuse hotline report to the Department of Children and Families ("DCF"). During a subsequent investigation, grand jurors, who reviewed this case and two other cases in which children with open abuse cases died, questioned the hospital's delay in reporting signs of abuse, as possibly being timed to coincide with a utilization review committee determination that there was no continuing medical necessity for hospitalization and, therefore, no further Medicaid reimbursements. The hospital then sought to shift financial responsibility to DCF for keeping Marissa in the hospital longer.

On December 10, 2000, the abuse report was assigned to Shirley Arias, a DCF Protective Investigator for District 11, Miami-Dade County. Ms. Arias immediately began gathering information from nurses, social workers, and reviewed Marissa's medical records. She was informed that Marissa's mother seldom visited her, including failing to come to sign necessary medical consent forms even after a social worker learned that she had no car and gave her money to pay for transportation; that families of other children in the same hospital room reported that Marissa's mother had spanked her in the hospital bed and, when confronted by a hospital social worker, her mother said it was because Marissa was "hard-headed"; that Marissa cried when her mother visited and was apparently not bonded with her; that doctors were concerned that the mother would not or could not follow up with physical therapy and other outpatient appointments; and that the mother failed to come and get Marissa on the original discharge date because she needed to get her live-in boyfriend out of jail. Ms. Arias called the mother's

residence in Lake Worth and a male who answered the telephone told her that the mother was in the Miami area but he was not sure where she was staying or how to contact her.

At Ms. Arias' request, the hospital staff notified her when the mother next arrived on December 11, 2000, 3 days after Marissa's original discharge date. Ms. Arias and Jeffry Biehler, M.D., interviewed the mother, with a hospital case manager and social worker present. Among their observations were that the mother took an inordinate amount of time to respond when asked whether she wanted to take her child home, hesitated when asked about domestic violence, and had no explanation for her child's collarbone fracture. Dr. Biehler, noting the mother's apparent lack of concern and emotionally flat affect, asked her whether she was under the influence of drugs or alcohol, which she denied.

An Initial Child Safety Assessment (ICSA) was required within 24 hours of an abuse hotline report. The ICSA was completed 3 days late on December 14, 2000, by Ms. Arias, and signed by her supervisor, Robert Boyack, on December 15, 2000. In the ICSA, Ms. Arias identified a number of risk factors indicative of physical abuse, including the following facts: the 2-year-old was non-communicative; the mother lived with a person who was biologically not related to the child; nurses reported and Ms. Arias witnessed the child's crying in response to her mother's visit and being calmed when taken out of her mother's presence; the child did not attend daycare resulting in limited community visibility with no opportunity for outsiders to observe her condition regularly; and the absence of any explanation for the collarbone fracture. Ms. Arias and Dr. Biehler agreed that Marissa should not be allowed to go home until a complete home study was conducted. Someone on the hospital staff also asked Ms. Arias to determine if DCF would pay the hospital. When Ms. Arias later asked Mr. Boyack about placing a hold on Marissa and assuming responsibility for her hospital expenses, he told her erroneously that DCF District 9 that includes the family's Lake Worth residence, not DCF District 11 that includes MCH, had jurisdiction.

Ms. Arias contacted the Lake Worth office which would not assign the case to an investigator until Ms. Arias entered

more information into the computer database. She completed the necessary data entry, then erroneously requested an out-of-town inquiry (OTI) or home visit rather than a home study. Evelyn Diez Collins, a protective investigator for District 9, was assigned the case and conducted the OTI, a home visit for the limited purpose of determining if the mother could meet the medical needs of the child. Ms. Collins met with the mother at the family's apartment and noted that it was clean but had no baby toys or furniture, just one adult bed. She told the mother that she needed to purchase a crib and that there would be a follow-up visit to check for the crib the following week. There was no subsequent visit and no complete home study. A home study would have included an evaluation of the family's finances, criminal background investigations, child abuse registry checks, and interviews with all adults in the home and part-time caregivers in the maternal grandfather's home where the mother claimed she left the child while she worked, and checks on other siblings, including another child who was living in another state with the natural father.

Hospital social workers repeatedly called Ms. Arias to find out what DCF was doing. They obtained Ms. Collins' name from Ms. Arias, and called her at the Lake Worth office to express concern. They also called the matter to the attention of DCF program administrator, Stephen Estes, who supervised Mr. Boyack, and contacted Mr. Estes' supervisor, Doris Pitts. Mr. Estes told Ms. Arias that DCF District 11 could, in fact, place a hold on the child and instructed her to review the case with DCF's lawyers for further instructions. After her consultation with a member of the legal staff on December 13, 2000, Ms. Arias developed a plan of action that required, prior to Marissa's release from the hospital, four tasks had to be performed: (1) conduct a home study; (2) staff the case with the child protection team to review the medical records for evidence of child abuse; (3) contact the child's natural father in another state; and (4) conduct criminal background investigations of the mother and her boyfriend. When a hospital social worker did not receive a return telephone call from Mr. Estes, she called his supervisor, Ms. Pitts directly who called Ms. Arias. Ms. Arias told her that Mr. Estes had already directed her to talk to a staff attorney.

At 3:30 P.M., on December 13, 2000, Ms. Arias received a telephone call from Ms. Collins, who had visited the family home, reporting that Ms. Collins believed the mother would be able to take care of the child with the outpatient services in place. Ms. Arias notified the hospital of the report. Although Ms. Collin's notes indicate that she knew that the mother's boyfriend was in jail, she later testified that she ran the criminal background investigations and found no criminal records for either the mother or her boyfriend. There is no evidence that any other tasks outlined in the plan of action were undertaken.

On December 14, 2000, Ms. Arias began contacting the natural mother for the purpose of having the child picked up from the hospital, but the mother said she had a headache and was not feeling well. Ms. Arias also sensed that the mother was concerned about her losing her job at a restaurant. Ms. Arias talked to the mother's brother, who said that the mother cares about the child but does not show emotions, and that he would bring her to get the child the following day. He added that, if the mother was not there the following day, the state could take the child into custody. Marissa was discharged from the hospital to go home with her mother on December 15, 2000, while MCH social workers were making telephone calls to DCF to protest that decision.

On the following day, Mr. Boyack attempted to transfer the case for follow-up to make sure the mother complied with medical referrals, noting in an e-mail that "Evelyn's [Collins'] home study did not reveal any threat to the child." The e-mail was sent to District 9 supervisor, Eleanor Parker, but there is no evidence that she ever responded or that she adequately supervised the work of Ms. Collins so that she would know that the assumption that a home study had been conducted was incorrect. Marissa's mother did keep most of the scheduled outpatient appointments until she missed one at MCH on January 8, 2001. Ms. Collins was notified by Mr. Estes and asked to visit the home to investigate whether the services had been provided at another closer hospital, but she never did.

On January 11, 2001, Marissa's mother left her in the custody of her boyfriend while she was working. The boyfriend called her at work to tell her the child was ill.

Marissa, unresponsive and in a coma when her mother arrived home, was transported by paramedics to the emergency room at Bethesda Hospital. She had a severe brain (subdural hematoma) and spinal injuries and lesions on her legs that appeared to be cigarette burns.

A nurse called the Lake Worth Police Department but there was apparently another delay in relaying information to the abuse hotline, while the boyfriend disappeared and was never charged. Even after Marissa received her severe injuries with knowledge that two other children had died due to confusion regarding transfers among DCF Districts 9, 10, and 11, District 9 Supervisor, Patti Mattison, attempted to transfer Marissa's case to a different investigative unit within District 9. She was told by Ms. Parker that her unit, in which Ms. Collins worked and which had all of the information on Marissa's case, had never actually accepted the transfer from Mr. Boyack.

Marissa was transferred to the trauma center at Delray Medical Center for surgery to relieve the bleeding and swelling in her brain, placed on a mechanical ventilator, had a tracheotomy to open her airways. She also had a Foley catheter and an abdominal feeding tube inserted. Subsequently, Marissa has had leg and hip surgeries, is expected to need additional surgeries, and to require an intense level of care throughout her life. Due to her permanent brain damage, Marissa cannot walk without assistance, cannot communicate verbally, suffers from leg weakness and hip dysplasia, and will never be able to care for herself.

Grand Jury Report and Recommendations

The grand jury supported DCF's decision to terminate the employment of Supervisor Patti Mattison and made the following additional recommendations: (1) that Supervisor Eleanor Parker and Investigator Evelyn Collins be terminated from employment; (2) that Steve Estes be placed on a performance improvement plan; (3) that Supervisor Robert Boyack be reassigned to the position of investigator and trained appropriately; (4) that Investigator Shirley Arias receive remedial training; (5) that Dr. Biehler at MCH not serve as a member of both the child advocacy team and the child protection team, so that two separate groups could meet the statutory requirement of providing independent

reviews of cases; (6) that internal operational procedures and communications between districts be improved; and (7) that then DCF Secretary Kearney publicize the abuse hotline by following specific steps outlined by the grand jury.

Claimant's Current Living Situation

After the termination of the parental rights of her natural parents, Marissa was adopted by Dawn and Rick Amora, who formerly operated Kid's Sanctuary, a licensed foster care home in Palm Beach County. The Amoras have adopted other children with special needs, and the family has now moved to Marianna.

Compensation Estimates

The life care plan for Marissa, prepared by Certified Life Care Planner Lawrence Forman, M.Ed., has a present value cost of \$20,600,000.00. DCF's experts, Habilitationist Sharon Griffin, M.Ed. and Economist Bernard F. Pettingill, Jr., Ph.D., developed a life care plan for Marissa with a present value cost of \$19,767,867.00. Marissa's past medical care and expenses, including liens, total \$458,719.89.

LITIGATION HISTORY:

Civil Litigation

The Amoras, as Marissa's parents and guardians, filed a civil tort action alleging negligence against DCF. A jury awarded them over \$35 million dollars and held DCF 75 percent negligent in causing Marissa's injuries. A final judgment was entered ordering DCF to pay \$26,849,849.06. DCF appealed the judgment and the District Court of Appeal affirmed the lower court, noting the extent of Marissa's injuries and DCF's failure to protect her, in a written opinion that stated, in relevant part:

Under the facts of this case, the jury could conclude that DCF's inaction unreasonably exposed Marissa to physical abuse leading to traumatic brain and spinal injury requiring dependency on caregivers for the rest of her life. Dr. Miller, DCF's own expert, agreed that a CPT review of Marissa's available charts and medical history would have shown that Marissa more likely than not was the victim of abusively-inflicted injuries. Furthermore, Dr. Miller agreed that medical information was

available before December 15, 2000 that could have allowed the health care professionals to determine that this child had suffered physical injuries of a fractured left clavicle and left scapula due to abuse. This evidence could lead a jury to reasonably conclude that it was foreseeable to DCF that if Marissa was released to her mother without further investigation, she could sustain more abuse. Dept. of Children and Family Services v. Amora, 944 So. 2d 431 (2007).

Guardianship Arrangements

The probate division of the Circuit Court for Jackson County, Florida, has designated Dawn Amora as guardian over the person and property of Marissa. Of the funds previously received, \$100,000 has been placed in the Marissa Lynn Amora Guardianship account. Mrs. Amora's applications for disbursements from that account have to be reviewed and approved by the court. It is appropriate for the state to pay claim bill funds into the same account to care for and compensate Marissa.

CLAIMANT'S POSITION:

Dawn and Rick Amora, as parents and guardians of Marissa, support the passage of the claim bill. They agree that the bill requires amending to direct the payment of \$26,849,849.08, based on allocation of negligence in the jury verdict, not the total for damages that is over \$35 million. Twenty percent of the fault was allocated to MCH, and 5 percent to the mother.

RESPONDENT'S POSITION:

In a letter dated November 9, 2007, and at the hearing held on November 27, 2007, DCF reported to the special masters that it would, hopefully by the time of the 2008 legislative session, negotiate a settlement providing Marissa with just compensation, so that DCF could support a bill providing a reasonable settlement given her medical condition, and current and future needs.

Based on the evidence presented at the hearing, DCF apparently intended to enter into negotiations to reduce the amount of the claim bill, assuming that the Amoras could continue to get services from Medicaid and/or the Medicaid Waiver Program. Although DCF has not reported the results of any such negotiations to the special masters, Ms. Amora testified that Medicaid has terminated the services and

required reapplications six times, and it does not cover many essentials, including behavior therapy, diapers, a handicapped equipped van, rehabilitation case manager, and nursing after she reaches age 21. The Amoras waited 9 months to get Medicaid to provide the appropriate wheelchair for Marissa, and the resulting scoliosis will likely cause her to need surgery to implant additional spinal cord rods.

The Medicaid Waiver Program has also proved unsatisfactory to the Amoras. A contractor paid through the Waiver to make modifications to the home in Marianna to accommodate Marissa's disabilities, inexplicably, left the job unfinished with a bath tub in Marissa's bathroom installed in front of a door leading to her brothers' adjacent bedroom. On November 16, 2007, the Amoras received notice that Marissa was eligible for the Waiver enrollment on February 22, 2006, when she was diagnosed with cerebral palsy, but that she must remain on a waiting list with approximately 15,000 people, unless she has a crisis, such as becoming homeless or dangerous.

OTHER ISSUES:

In addition to the amendment regarding the amount of the claim, amendments to the whereas clauses are intended to reflect the facts more accurately and to conform to the wording in companion House Bill 443.

CONCLUSIONS OF LAW:

As the District Court of Appeal held, in affirming the lower court judgment and the jury verdict, there was unquestionably "competent substantial evidence that DCF was negligent and that the negligence was the proximate cause of the injuries sustained by 2-year-old Marissa Amora." Id. 944 So.2d 431.

ATTORNEYS' FEES AND LOBBYIST'S FEES:

Attorneys' fees are limited to 25 percent as required by s. 768.28(8), F.S., and have been completely deferred pending passage of the bill. Costs of \$102,837.79 were incurred during the preparation and 2-week civil trial of the case and the appeal to the district court, and those costs have also been deferred. The entire \$100,000 that has been recovered was transferred to the Marissa Lynn Amora Guardianship, subject to the jurisdiction of the Circuit Court in Jackson County.

The lobbyist fee is an additional 6 percent of the final claim bill, contrary to the provisions of section 3 of the bill.

RECOMMENDATIONS:

For the reasons set forth in this report, I recommend that Senate Bill 46 (2008) be reported FAVORABLY, as amended.

Respectfully submitted,

Eleanor M. Hunter
Senate Special Master

cc: Senator Al Lawson
Representative Marti Coley
Faye Blanton, Secretary of the Senate
Stephanie Birtman, House Committee on Constitution and Civil Law
Counsel of Record