

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ROCK POLLOCK, SR., AND SHAWNA )  
M. POLLOCK, on behalf of and as )  
parents and natural guardians )  
of ROCK POLLOCK, JR., a minor, )  
 )  
Petitioners, )  
 ) Case No. 08-4224N  
vs. )  
 )  
FLORIDA BIRTH-RELATED )  
NEUROLOGICAL INJURY )  
COMPENSATION ASSOCIATION, )  
 )  
Respondent, )  
 )  
and )  
 )  
LAURA L. DANNER, CNM, GULF )  
COAST OBSTETRICS & GYNECOLOGY, )  
LTD, f/k/a CORCORAN, EASTERLING )  
& DOYLE-VALLERY, LTD., AND )  
SARASOTA COUNTY PUBLIC HOSPITAL )  
DISTRICT, )  
 )  
Intervenors. )  
\_\_\_\_\_ )

FINAL ORDER

Upon due notice, this cause came on for final hearing before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings, on February 2, 2012, by video teleconference with sites in Tampa and Tallahassee, Florida. Due to Judge Davis' pending retirement, the case was transferred to Administrative Law Judge Susan Belyeu Kirkland pursuant to section 120.57(1)(a), Florida

Statutes (2011)<sup>1/</sup> for all further proceedings, including the entry of a final order.<sup>2/</sup>

APPEARANCES

For Petitioners: Rock Pollock, Sr., pro se  
1511 72nd Street, West  
Bradenton, Florida 34209

For Respondent: Robert J. Grace, Jr., Esquire  
Stiles, Taylor and Grace, P.A.  
Post Office Box 460  
Tampa, Florida 33601

For Intervenor Sarasota Memorial Hospital:

No appearance.

Intervenors Laura L. Danner, CNM, and Gulf Coast Obstetrics & Gynecology, Ltd., f/k/a Corcoran, Easterling & Doyle-Vallery Ltd.:

No appearance.

STATEMENT OF THE ISSUE

The issue in this case is the determination of the reasonable expenses incurred in connection with the filing of this claim under sections 766.301-766.316, as provided for by paragraph 7 of the parties' Stipulation filed July 14, 2011, and approved by Order entered July 18, 2011.

PRELIMINARY STATEMENT

On August 25, 2008, Petitioners filed a Petition for Benefits Pursuant to Florida Statute Section 766.301 et seq. alleging that Rock Pollock, Jr., suffered a birth-related neurological injury that was compensable under the Florida

Birth-Related Neurological Injury Compensation Plan (Plan). After a final hearing on the issue of compensability, Judge Davis entered a Final Order on October 21, 2010, approving the claim for compensability. The issues of the award and the amount of expenses remained.

On November 30, 2010, the parties filed a Stipulation for Lump Sum Payment of Parental Award of \$100,000.00. The stipulation was approved by Order dated December 3, 2010.

On July 14, 2011, the parties filed a Stipulation concerning the award to Petitioners. Paragraph seven of the Stipulation provided:

**Reasonable Expenses Pursuant to §766.31(1)(c) Fla. Stat.** The parties agree that the Petitioners are entitled to reimbursement of reasonable expenses by the Respondent, for the costs associated with or relating to the litigation, negotiation and preparation of this Stipulation. The parties shall have 30 days following the entry of an Order Approving the Stipulation within which to agree upon the amount of reasonable expenses, subject to approval of the ALJ. Should the parties not so agree, then the parties shall request the ALJ schedule a hearing to determine the amount of reasonable expenses to be awarded to Petitioners, which determination shall be subject to appeal by either party pursuant to §766.311, Fla. Stat. This paragraph 7 shall be the only issue which is subject to appeal. The remainder of this Stipulation, is and upon approval of the ALJ, shall not be appealed by either party.

The Stipulation entered into on July 14, 2011, was approved by Order dated August 18, 2011.

The parties were unable to agree to the amount of expenses to which Petitioners are entitled, and a final hearing was scheduled for December 2, 2011, for the determination of the amount of expenses. At Petitioners' request, the final hearing was rescheduled for February 2, 2012.

At the final hearing, Petitioners called Rock Pollock, Sr., as a witness. Petitioners' Exhibits 1 through 57 were admitted in evidence. However, in reviewing Petitioners' Exhibits, no exhibits numbered 47, 49, 51, 53, and 55 were submitted. Petitioners' Exhibits 58 and 59 were not admitted in evidence. Respondent presented no witnesses. Respondent's Exhibits 1 through 6 were received in evidence.

The one-volume Transcript of the final hearing was filed on February 13, 2012, and the parties were accorded until February 23, 2012, to file proposed final orders. Respondent filed its Proposed Final Order on February 23, 2012. As of the date of this Final Order, Petitioners have not filed a proposed final order.

#### FINDINGS OF FACT

1. Petitioners argue that Rock Pollock, Sr., should be compensated for the time that he spent in connection with the filing of the claim as an expense. Petitioners were not

represented by an attorney in connection with the filing of the claim for benefits, nor are Petitioners attorneys themselves.

Mr. Pollock is self-employed as a home builder. By Order dated January 10, 2012, Administrative Law Judge Davis determined that Petitioners were not entitled to an award of attorney's fees.

2. Petitioners seek recovery for the following expenses<sup>3/</sup>:

<u>Expense</u>	<u>Date</u>	<u>Amount</u>
(1) Postage	6-12-10	\$10.32
(2) Postage	4-4-11	\$1.22
(3) Postage	12-08-10	\$1.05
(4) Postage	2-15-11	\$4.19
(5) Postage	5-10-11	\$1.28
(6) Postage	4-11-11	\$18.27
(7) Postage	12-20-10	\$11.00
(8) Postage	unknown	\$5.38
(9) Postage	5-23-11	\$1.08
(10) Postage	5-19-11	\$13.25
(11) Postage	4-4-11	\$17.20 <sup>[4/]</sup>
(12) Postage	8-25-11	\$15.33
(13) Postage	unknown	\$13.69
(14) Unique Tax	6-14-11	\$50.00
(15) Ron Boyce	3-23-11	\$120.00
(16) Sue Habershaw	5-25-11	\$565.00
(17) Premier Video	5-12-11	\$75.00
(18) Premier Video	2-25-11	\$150.00
(19) Asap Process (Carrol)	5-11-11	\$60.00
(20) Asap Process (BSC)	4-1-11	\$40.00
(21) Asap Process (SSI)	3-31-11	\$40.00
(22) Asap Process (Eddy)	3-15-11	\$40.00
(23) Asap Process (Renzi)	3-14-11	\$40.00
(24) Asap Process (Musgrove)	3-14-11	\$40.00
(25) Asap Process (Romero)	3-14-11	\$40.00
(26) Asap Process (Rowe)	3-14-11	\$40.00
(27) Lucente Reporting	4-1-11	\$238.75
(28) Lucente Reporting	3-24-11	\$282.00
(29) Lucente Reporting	3-25-11	\$252.00
(30) Lucente Reporting	5-20-11	\$170.00
(31) Staples Receipt	11-22-10	\$6.38
(32) Staples Receipt	5-22-11	\$11.27
(33) Staples Receipt	5-22-10	\$4.78

(34)	Staples Receipt	5-22-10	\$41.62
(35)	Staples Receipt	5-23-10	\$36.73
(36)	Staples Receipt	4-11-11	\$64.32
(37)	Office Depot Receipt	12-13-10	\$177.61
(38)	Cabot Lodge	5-24-11	\$111.38
(39)	Gas to Tallahassee	5-25-11	\$145.04
(40)	Gas to Premier Video	5-12-11	\$3.31
(41)	Gas to Premier Video	2-25-11	\$3.31
(42)	Gas to Lucente	4-1-11	\$2.38
(43)	Gas to Lucente	3-24-11	\$2.38
(44)	Gas to Lucente	3-25-11	\$2.38
(45)	Gas to Lucente	5-20-11	\$2.38
(46)	Meals	5-24-11	\$31.00 <sup>[5/]</sup>
(47)	Meals	5-25-11	\$37.00
(48)	Gas to Romero Depo.	3-14-11	\$5.70
(49)	Meals for Romero Depo.	3-14-11	\$18.00 <sup>[6/]</sup>
(50)	Gas to Renzi Depo.	3-16-11	\$6.27
(51)	Meals for Renzi Depo.	3-16-11	\$18.00 <sup>[7/]</sup>
(52)	Gas to Eddy Depo.	4-6-11	\$2.67
(53)	Meals for Eddy Depo.	4-6-11	\$12.00 <sup>[8/]</sup>
(54)	Gas to Rowe Depo.	3-15-11	\$2.25
(55)	Meals for Rowe Depo.	3-15-11	12.00 <sup>[9/]</sup>
(56)	de la Parte & Gilbert	9-21-11	48.00
(57)	Westlaw	1-10-11-	
		12-31-11	\$1,472.59

3. Respondent has agreed to reimburse Petitioners the expenses listed on Petitioners' Exhibits 1 through 10 and 12 through 30. The total amount for those expenses is \$2,338.81.

4. The items claimed in Petitioners' Exhibits 31 through 35 are for office supplies and a lollipop. One of the items claimed in Petitioners' Exhibit 36 is an envelope, and Mr. Pollock does not recall what the other item was. The items claimed in Petitioners' Exhibit 37 are a four-drawer file cabinet and a desk.

5. Petitioners are claiming lodging, gas<sup>10/</sup> and meals for the deposition of Ms. Kenney Shipley, which was taken in

Tallahassee. These expenses are set forth in Petitioners' Exhibits 38, 39, and 46. There is no receipt for one of the meals claimed.

6. Petitioners are claiming gas expenses incurred in picking up copies of depositions. These expenses are set forth in Petitioners' Exhibits 40 and 41.

7. Petitioners are claiming gas mileage for attending their own depositions, which Petitioners listed as being taken on April 1, 2011, March 24, 2011, March 25, 2011, and May 20, 2011. The amounts of the mileage are contained in Petitioners' Exhibits 42 through 45. A review of the docket in this case does not show that depositions were taken on those dates.

8. Petitioners are claiming mileage expense for traveling to and from the depositions of Andrew Romero, Barbara Renzi, Samuel Eddy, and Ronald Rowe. These depositions were taken either in Bradenton or in locations near Bradenton. The mileage for these claims are contained in Petitioners' Exhibits 48, 50, 52, and 54. Petitioners also claim as expenses meals for the days on which the depositions were taken. However, Petitioners have submitted no receipts for these meals, and at least one meal was after the deposition had been completed.

9. Petitioners seek an attorney's fee for the de la Parte and Gilbert law firm for legal research for fees and costs for non-lawyer pro se litigants. The de la Parte and Gilbert law

firm has made no appearance in this case and no evidence was presented as to the reasonableness of the amount of time spent on the research and the hourly rate charged.

10. Petitioners are claiming the costs of West information services from March 1, 2011, through December 31, 2011. Petitioners presented no evidence on what information services were provided other than Mr. Pollock needed the services to prepare his case. Mr. Pollock chose to use the West services rather than do research which was not generated by a computer. No evidence was presented on the amount of time that Mr. Pollock performed legal research using West services.

#### CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. §§ 766.301-766.316, Fla. Stat.

12. Petitioners are claiming expenses pursuant to section 766.31(1)(c), which provides for the award of the following expenses:

(c) Reasonable expenses incurred in connection with the filing of a claim under ss. 766.301-766.316, including reasonable attorney's fees, which shall be subject to the approval and award of the administrative law judge.

13. Petitioners did not retain an attorney to represent them in the filing of Petitioners' claim. Therefore, there is



no award for attorney's fees. Mr. Pollock claims that he should be compensated for his time as a non-lawyer in representing Petitioners in this claim. There is nothing in sections 766.301-766.316 which authorizes an award of fees to a non-lawyer. See generally Dep't of Ins. v. Fla. Bankers' Ass'n, 764 So. 2d 660 (Fla. 1st DCA 2000).

14. Respondent contends that Petitioners should be limited to costs that are within the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions (Uniform Guidelines), effective January 1, 2006. Respondent has agreed there are costs in the amount of \$2,338.81 which are taxable.

15. The Uniform Guidelines contemplates that the litigants are represented by attorneys and advises that travel expenses of attorneys should not be taxed as costs. Courts have held that office supplies, travel expenses and computer research are not taxable as they are considered to be overhead. Landmark Winter Park, LLC v. Colman, 24 So. 3d 787 (Fla. 5th DCA 2009); State v. Skidmore, 720 So. 2d 1125 (Fla. 4th DCA 1998); Mitchell v. Osceola Farms Co., 574 So. 2d 1162 (Fla. 4th DCA 1991).

16. The Uniform Guidelines provide:

These guidelines are advisory only. The taxation of costs in any particular proceeding is within the broad discretion of the trial court. The trial court should exercise that discretion in a manner that is consistent with the policy of reducing the overall costs of litigation and of keeping

such costs as low as justice will permit. With this goal in mind, the trial court should consider and reward utilization of innovative technologies by a party which subsequently reduces costs and reduce the award when innovative technologies that were not used would have resulted in lowering costs. In addition, these guidelines are not intended to (1) limit the amount of costs recoverable under a contract or statute, or (2) prejudice the rights of any litigant objecting to an assessment of costs on the basis that the assessment is contrary to applicable substantive law.

17. In the case of a pro se litigant, certain expenses, which generally would be classified as a normal incident of business overhead of an attorney, would not be a normal incident of the pro se litigant's business overhead. In Weeks v. Golden, 846 So. 2d 1247 (Fla. 1st DCA 2003), the court opined that some of the costs of postage, envelopes, and copying for an incarcerated litigant, who was representing himself in an action to enforce the provisions of chapter 119, should be allowed if reasonable.

18. In the instant case, Mr. Pollock has been representing Petitioners. Therefore, some of the costs incurred by Mr. Pollock which are not costs that would be allowed by the Uniform Guidelines should be allowed. Of the office supplies sought by Petitioners, only the paper and envelope would be considered a necessary cost for the litigation. The other office supplies and equipment such as a

desk, file drawer, three-hole punch, post it notes, binders, and folders are items which may have made organization easier for Mr. Pollock, but which were not essential to the filing of the claim. Thus, the cost of paper and an envelope, \$17.01,<sup>11/</sup> should be allowed.

19. The travel expenses incurred for traveling out of town for the deposition of Ms. Shipley should be allowed except for the meal for which there was no receipt. The total travel expenses for the deposition of Ms. Shipley is \$293.42.

20. The travel expenses to attend local depositions is not allowed, nor is the travel expense to pick up some depositions locally. A review of the docket in this case revealed that some of the depositions for which mileage was claimed did not take place on the dates claimed. In addition, no receipts were provided for meals that were claimed in connection with the depositions.

21. The fee claimed for the research done by the de la Parte & Gilbert law firm is not allowed. It is an attorney's fee for an attorney who did not make an appearance in this case. Additionally, there is no testimony on the reasonableness of the time and rate charged by the law firm.

22. The bills from West for information services is not allowed. Any research that was done by Mr. Pollock could have been done at the county law library. Additionally there is no

evidence to support the type of research that was done and how it relates to this case or the amount of time the research took.

23. The total amount of expenses which are allowable is \$2,649.24.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that Petitioners are awarded \$2,649.24 for expenses reasonably incurred in pursuing the subject claim.

It is further ORDERED that the Division of Administrative Hearings retains jurisdiction over this matter to enforce this award.

DONE AND ORDERED this 14th day of March, 2012, in Tallahassee, Leon County, Florida.

*Susan Belyeu Kirklund*

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SUSAN BELYEU KIRKLAND  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of March, 2012.

ENDNOTES

1/ Unless otherwise indicated, all references to the Florida Statutes are to the 2011 version.

2/ Section 120.57(1)(a) provides, in relevant part as follows: "If the administrative law judge assigned to a hearing becomes unavailable, the division shall assign another administrative law judge who shall use any existing record and receive any additional evidence or argument, if any, which the new administrative law judge finds necessary." The undersigned, having attended the final hearing at the Tallahassee video site and having reviewed the pleadings, transcript, and exhibits, has concluded that no further proceeding is necessary prior to the entry of the Final Order.

3/ The numbering of the expenses correspond with Petitioners' exhibit numbers, except as indicated below where no exhibit was submitted to support the amount claimed.

4/ The claim for this expense was withdrawn at the final hearing.

5/ No exhibit was submitted for this claim.

6/ No exhibit was submitted for this claim.

7/ No exhibit was submitted for this claim.

8/ No exhibit was submitted for this claim.

9/ No exhibit was submitted for this claim.

10/ Petitioners are claiming \$.23 per mile.

11/ These items were among several on the same receipt; therefore, tax at the rate of 6.5 percent was added to the price of the items.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Review of a final order of an administrative law judge shall be by appeal to the District Court of Appeal pursuant to section 766.311(1), Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy, accompanied by filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal. See § 766.311(1), Fla. Stat., and Fla. Birth-Related Neurological Injury Comp. Ass'n v. Carreras, 598 So. 2d 299 (Fla. 1st DCA 1992).