

2006 WL 5609122

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United States Court of Federal Claims.

Danielle CARR, by her Mother and  
Next Friend, Martha Carr, Petitioner,

v.

SECRETARY OF the DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, Respondent.

No. 00-778V. | March 29, 2006.

#### Attorneys and Law Firms

Ronald Craig Homer, Conway, Homer & Chin-Caplan, P.C.,  
for Petitioner.

James Andreas Reistrup, Traci R. Patton, U.S. Department of  
Justice, Washington, DC, for Respondent.

#### **RULING ON LIFE CARE PLANNER'S COST**<sup>1</sup>

GARY J. GOLKIEWICZ, Chief Special Master.

\*1 Petitioner moved for fees and costs in the above-captioned case. Respondent contested various aspects of the request. The parties have worked long and hard to resolve informally the dispute. Ultimately, the parties resolved all but one issue, the life care planner's cost. In this Ruling, the undersigned will resolve the life care planner dispute. Subsequently, a Decision will issue, which will incorporate this Ruling.

Respondent objected to the hourly rate for and the number of hours claimed by petitioner's life care planner, Jeff Walker. The objections will be addressed in turn. In summary, the undersigned finds that the claimed hourly rate of \$110 is reasonable, but the number of hours spent on the life care plan was unsubstantiated and appears unreasonable.

Regarding Mr. Walker's credentials, the essence of respondent's objection is that he does not "carry the requisite credentials to execute the [life care planning] function." Respondent's Response at 17. However, respondent makes no effort to answer the question: what are the requisite credentials? Petitioner's counsel avers that Mr. Walker, along with three others, were "trained" by counsel's firm in the art of life care planning. Counsel states that Mr. Walker has been producing life care plans for the Program for five

years with each of his plans resulting in settlements with respondent. Petitioner's Amended Petition at 17. Respondent rejoins that "tethering Mr. Walker's fees to outcomes in other Vaccine cases is also unhelpful, as it does not address whether his charges were reasonable and appropriate in this case." Respondent's Response at 16 (citation omitted).

Is there a defined discipline or credential for a life care planner? Neither party attempts to address that question, even though it is central to the objection leveled at Mr. Walker. The undersigned has seen a variety of backgrounds for life care planners, which include nurses, therapists, and even doctors. Certifications exist, but to the undersigned's knowledge, they are not mandatory. A review of several websites shows a variety of career paths feeding the LCP field. While it is apparent that some background in a medically related field is the norm, it does not appear to be a requirement. For example, The International Academy of Life Care Planners recognizes that Life Care Planning "is a transdisciplinary specialty of practice." International Academy of Life Care Planners, *Standards of Practice* (visited Mar. 29, 2006) <[http://www.internationalacademyoflifecareplanners.com/life\\_care\\_planning\\_guidelines.html](http://www.internationalacademyoflifecareplanners.com/life_care_planning_guidelines.html)>. Kaplan University offers a Life Care Planning Certificate. Kaplan's course is an on-line program designed for a wide variety of health care professionals, including special education professionals, licensed speech pathologists, and professional counselors. See Kaplan University, *Life Care Planning Certificate* (visited Mar. 29, 2006) <[http://www.kaplanuniversityonline.com/pop/health\\_lifecare.html](http://www.kaplanuniversityonline.com/pop/health_lifecare.html)>.

\*2 Clearly, knowledge of health care issues, services, equipment, and standards of care are extremely beneficial to a life care planner. The Nurse Entrepreneur Network states that "[t]o be a successful life care planner it is very helpful to be a health care professional..." Nurse Entrepreneur Network, *Nursing Business Opportunity: Life Care Planning* (visited Mar. 29, 2006) <<http://www.nurse-entrepreneur-network.com/public/170.cfm>>. The International Academy of Life Care Planners states that the Life Care Planner must have "sufficient education and training to assure that the Life Care Planner has an understanding of human anatomy and physiology, pathophysiology, the health care delivery system, the role and function of various health care professionals, and clinical practice guidelines and standards of care." *Standards of Practice*. But, and this is critical, there is no mandated professional background, training or certification that the undersigned can determine, and the parties have not cited any, which would disqualify Mr. Walker as a life care planner.

The undersigned makes two additional points. First, the undersigned agrees completely with petitioner's counsel regarding challenges in past cases to life care planners who "substitut[ed] their own opinions for those of the petitioner's health care and/or educational providers." Petitioner's Amended Petition at 16. Respondent and petitioner alike have raised these objections. Thus, the life care planners have been instructed routinely to interview providers, obtain recommended future needs/services and to obtain cost estimates for those needs/services. Again, knowledge of health care services is helpful to taking provider information and formulating a life care plan, but training, education and experience can substitute for a professional medical background. Which leads to my second point, the fact that Mr. Walker has been producing life care plans for the past five years, with evidently much success, is testimony to the fact that the quality of the person, and not necessarily the professional background, can be one road to becoming a successful life care planner.<sup>2</sup>

Regarding the hourly rate of \$110 per hour, the undersigned agrees with petitioner that Mr. Walker is due reasonable compensation. Petitioner's Exhibit 43 shows a range of hourly rates of \$125 to \$250 per hour. My internet search shows advertised rates ranging from \$80 to 400 per hour. See Kaplan University; The Nurse Entrepreneur Network. The undersigned awarded \$110 per hour in *Ceballos v. Secretary of HHS*, No. 99-97V, 2004 WL 784910 (Fed.Cl.Spec.Mstr. Mar. 25, 2004) and \$140 per hour in *Velasquez v. Secretary of HHS*, No. 00-117V (unpub.Mar.4, 2005). It must be conceded that the two life care planners in those cases were far more experienced than Mr. Walker. However, while \$110 per hour is clearly on the high side of compensation for Mr. Walker taking into account his background and experience as a life care planner, considering all of the evidence, the undersigned cannot say that the claimed rate is unreasonably high.

#### Footnotes

- 1 The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. *Id.*
- 2 In making that statement, the undersigned rejects respondent's argument that past performances cannot be "tethered" to the case at hand. Respondent's Response at 16. The essence of respondent's argument is whether Mr. Walker's has the credentials to perform as a life care planner. The fact that Mr. Walker has produced vaccine life care plans for five years, and, according to the un rebutted

\*3 Regarding the hours spent by Mr. Walker, his billing statement, contained in petitioner's Ex. C, is woefully inadequate. It is axiomatic that the burden to establish the reasonableness of the hours expended rests with petitioner. See *Stotts v. Secretary of HHS*, No. 92-633V, 1997 WL 842543 (Fed.Cl.Spec.Mstr. Apr. 23, 1997), at \*8. It is impossible to determine from this billing sheet the reasonableness of the time spent. The time is explained in general categories, such as "Review and correspondence," is billed in quarter hour increments, and appears to be excessive, e.g., "Notes transcription" for two hours, "Follow up with mother, organize info" for two hours. It must be noted that while a medical background does not disqualify one from performing the life care planner function, it is expected that the hours spent in producing a life care plan will be comparable to a life care planner who has a medical background. That is to say that the training and experience which substituted for the medical background in becoming a life care planner should result in the same efficiencies in producing a life care plan; the Vaccine Program will not compensate for on-the-job training. It is impossible to discern whether in fact Mr. Walker spent excessive time in this case because the general billing categories and lack of adequate descriptions for the time spent prevent such a determination. Faced recently with a similar situation, the undersigned reduced the requested hours by 20%. See *Velasquez v. Secretary of HHS*. The same reduction is made here. Also, the same admonition is given: Mr. Walker "is forewarned that much greater specificity is required in [his] billings."

In summary, petitioner is awarded the following costs for Mr. Walker: 86.4 hours at \$110 per hour and 16 hours of travel time at \$45 per hour for a total award of \$10,224.00.

**IT IS SO ORDERED.**

statement of petitioner's counsel, those plans have produced settlements with respondent is probative of Mr. Walker's de facto performance as a life care planner. Stated another way, respondent cannot treat Mr. Walker as a life care planner for five years and interact with him in that capacity and then complain of Mr. Walker performing as a life care planner. That is an unreasonable position to take, one that will not be sanctioned by the undersigned.

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