

LOCAL NEWS

Family awarded \$4 million in malpractice suit

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Of the STAR Staff

Marta Nieves Cruz had such an uneasy pregnancy that she never dreamed she could have a problem in the delivery room.

"I never had morning sickness, dizziness or that sick-to-my-stomach feeling," she says.

So when she walked into the Carolina Regional Hospital on Dec. 23, 1983 for what she thought was to be a routine examination, she was surprised when told she would deliver prematurely.

She remained overnight and was given a double dose of Demerol supplemented by a shot of Visteril, which tends to double the impact of Demerol. Demerol has no effect on a fetus, but it has a highly negative impact on a newborn's respiratory system, impairing the flow of oxygen to the brain.

Nieves' baby, Angel, came into the world with what appeared to be sluggish vital signs, an unnatural complexion and the umbilical cord wrapped around his neck.

Angel, now 14, has severe mental retardation and for years could not walk without the help of a walker. At home, he moved about by dragging himself across the floor.

"I used to carry him from home to the car and into the tub where I would bathe him," Nieves said in a telephone interview from her home in Kissimmee, Fla. where she now lives with Angel and two young children.

The Nieves family sued the Carolina Regional Hospital and the University of Puerto Rico Medical Sciences Campus, which oversaw the teaching hospital.

Almost 14 years later, in what may be the largest single judgment ever awarded by a commonwealth court, Carolina Superior Court Judge Victor Rivera González on Aug. 22 awarded Angel \$4 million in damages.

Representing Angel and his mother in the lawsuit were attorneys David Efrón, José A. Cuevas and Alberto Pérez Hernández.

The decision is not reversed on appeal, the amount awarded may well be the last of its kind as a result of a \$150,000 cap on malpractice claims against government health facilities signed into law two years ago.

The court agreed that once the Demerol was administered, the hospital could have ameliorated the situation by giving the mother oxygen, which would have increased the amount of oxygen flowing to the fetus.

Nieves should also have been placed on her side and fed intravenous fluids. But the delivery was performed by a first year intern and the only other person in the room was a nurse. The error of the Demerol and Vistaril went unde-



STAR photo

Marta Nieves Cruz maintains her son Angel, 7 years old in this photo taken from a family video, was born with severe mental retardation as a result of the care she received while giving birth at Carolina Regional Hospital. The Nieves family sued the hospital and the University of Puerto Rico Medical Sciences Campus and, in what may be the single largest judgment ever, was awarded \$4 million in damages.

on the grounds the corrective measures were not taken, the court agreed.

"I'm a little woman and I can't carry him any more. He is in puberty and I wonder if I am invading his privacy when I bathe him," Nieves said. "When he got bigger he could not walk any more with the walker. His feet could not support his weight."

Recently, she said, Angel had reconstructive surgery performed on his feet in the hopes it will enable him to walk again.

"We'll see," said Nieves, 38. "I can take care of him now and for years to come. But, what happens after I'm gone?"

That's the question the Nieves family hopes has been permanently answered by the court's award.

Although the university attorney, Carlos Ramos, asked the judge to limit the award to what the law says, Rivera refused

on the grounds the lawsuit was filed before the law was enacted.

Ramos said he filed a motion for reconsideration with Rivera, a necessary step before filing an appeal with the Circuit Court of Appeals.

The cap on judgments was placed by virtue of Law 98 of Aug. 24, 1994 when UPR President Norman Maldonado told the Legislature that the \$150,000 placed on court awards against government hospitals should be placed on those operated by the university.

"Maldonado told the Legislature that if they did not place the caps on the awards, the university could soon face \$200 million in lawsuits," Ramos said.

In any case, the case will likely end up at the Supreme Court.

"If I win the appeal at that level, [Angel's lawyer] Efrón will appeal to the Supreme Court. If the Appeals Court sus-

tains Judge Rivera González, then I'll go to the Supreme Court," Ramos said.

As a rule, the Supreme Court pares down what are considered to be generous judgments.

In his ruling, Rivera said: "The boy suffers from severe and permanent mental retardation, but according to Dr. Agustín García, given the intense special education and therapy he is receiving, he will understand the limitations of his condition. For the remainder of his life, he will require medical attention, he will need help moving and making decisions."

The judge added that in accord with expert medical attention, Angel will need help for the remainder of his life.

Nieves believes that if the appeals process leaves the judgment intact, Angel will always receive the help he needs, "even without me."