

**SUPERIOR COURT OF JUSTICE OF CASTILLA-LA MANCHA**  
**LABOR DIVISION**  
**ALBACETE**

**SECOND SECTION**

Appeal n. 782/08.-

Judge-Rapporteur: Mr. Montiel González

Honorable Judge José Montiel González, President

Honorable Judge Petra García Márquez

Honorable Judge Luisa M<sup>a</sup> Gómez Garrido

Honorable Judge Eugenio Cárdenas Calvo

---

Albacete, 12 March 2009

**IN THE NAME OF THE KING**

The Labor Division of the Superior Court of Justice of Castilla-La Mancha, composed of the aforementioned honorable judges, has passed the following ruling:

**RULING 445**

Regarding the appeal number 782/08, filed by the Health Service of Castilla-La Mancha (SERVICIO DE SALUD DE CASTILLA-LA MANCHA), against the ruling passed by the Labor Court n. 2 of Ciudad Real, dated 7 February 2008, writ 429/07

**FACTUAL BACKGROUND**

FIRST.- The appealed ruling states the following in its operative part: “After taking into consideration the appeal filed by Mrs. MONTSERRAT CAMACHO GARCÍA against the Health Service of Castilla-La Mancha (SESCAM), we declare the right of the appellant to 3 fertility treatment cycles and order the defendant to comply with the ruling”.

SECOND.- That in the aforementioned ruling, the following facts have been proved:

FIRST: On its decision of 11 June 2007, the Health Service of Castilla-La Mancha dismisses the appellant's claim, who is represented by Mr. Emiliano Rubio Gómez, against the ruling of 26 April 2007 of the Provincial Allowance Department (Oficina Provincial de Prestaciones del SESCOAM) in which a single in vitro fertilization treatment was authorized and funded, according to the dispositions established by the In Vitro Fertilization and Related Techniques Regional Commission (Comisión Regional de seguimiento de la fecundación in vitro y técnicas relacionadas).

SECOND: The appellant is beneficiary of the Health Service of Castilla-La Mancha and, therefore, has the right to undergo the number of fertility treatments that law established, independently of the number of treatments she had undergone in private institutions.

THIRD: Remedies of the previous resort have been exhausted.

THIRD.- The appeal filed by the defendant against the aforementioned ruling was made in time and due form.

This appeal has been contested.

Once the writ has been referred to this Court, it proceeded to its review and decision.

### LEGAL RATIONALE

FIRST.- The only reason to appeal, under Article 191 c) of the Law on Labor Proceedings (Ley de procedimiento laboral) is a violation of Law 14/2006 of 26 May, assisted human reproduction techniques, since the Health Service of Castilla-La Mancha considers that the rejection of more in vitro fecundation cycles is in conformity with the regulations established previously by the Reproduction Techniques Regional Commission.

According to the ruling of the first instance, the appellant underwent two fertility treatment cycles (Intracytoplasmic Sperm Injections, ICSI) in a private institution and one in a public health institution, all of them with negative results. The appellant requests new fertility treatments, under the same conditions of every other member of the Health Service of Castilla-La Mancha, without taking into consideration the special circumstance of having undergone two fertility treatments previously in a private institution.

The common services portfolio of the National Health Service and the procedure to update it, establish that the Royal Decree 1030/2006 (Real Decreto 1030/2006), dated 15 September, includes under the paragraph 5.3.8 of annex III assisted human reproduction when clinically indicated or when a case of sterility has been diagnosed and according to each Region's health service programs: artificial insemination, in vitro fecundation, ICSI with own gametes or donor's gametes and with embryo transfers and lastly, Gamete Intrafallopian Transfer.

Law 14/2006 of 26 May, about assisted human reproduction techniques, specifically establishes under paragraph 1 of Article 3 that "The assisted reproduction techniques may only be adopted when there is a reasonable chance of success, do not present a danger to the patient's physical or psychological health or her children's health, with the free and conscious previous agreement of the woman, who must have been informed of the risks, success rate and conditions of its application".

According to Article 20.4 e) of the same Law, the National Committee of Assisted Human Reproduction (Comité Nacional de Reproducción Humana Asistida) is responsible for informing about the way in which the general provisions as defined by applicable Law or directly related to assisted reproduction are drawn up, with the considerations of support commissions and reference, homologous regional commissions (Article 20.6).

Lastly, the ruling of 8 July 2003 of the Health Service of Castilla-La Mancha (DOCM of 28 July 2003) constitutes the In Vitro Fertilization and Related Techniques Regional Commission. Its duties are, among others, analyze, study and decide cases in order to apply these techniques in the health institutions of Castilla-La Mancha.

The Regional Commission has established the type of provided assisted human reproduction services by the Health Service of Castilla-La Mancha and the conditions that have to be met in order to undergo the aforementioned services. Paragraph B.3 of this document says the following: "In vitro fecundation should not be done more than three times, according to the equity principle. Previous cycles, whether they were carried out in private or public institutions, count as well. The woman must be under 40 years of age.

The appellant has already undergone three fertility cycles (ICSI), two previously in a private institution and a third funded by the Health Service of Castilla-La Mancha. Therefore, in accordance to the aforementioned regulations of the Regional Commission, she does not have the right to request new fertility treatments funded by public health.

The fact that the two first cycles were carried out in a private institution does not make invalid the aforementioned regulations, since fertility treatments shall only be carried out when “there is a reasonable chance of success”, according to Article 3.1 of Law 14/2006 of 26 May and “according to each Region’s health service programs”, paragraph 5.3.8 of Annex III, Royal Decree 1030/2006 of 15 September.

The Supreme Court Ruling of 17 July 2007 argues in the same direction, pointing out that “public health shall provide any health service in which there are significant efficiency and security rates or when there is enough evidence of it contributing to the prevention, treatment or curing of diseases, life expectancy enhancement or preservation, self-reliance, or pain and suffering elimination. And, on the other hand, such services cannot be delivered when the aforementioned conditions are not met.

There is a reason for which a fertility treatments limit has been established. There is scientific data that clearly shows the ineffectiveness of the treatment after three cycles have been undergone with no positive results. It is also justified from an economical point of view, since the treatment is extremely expensive. Therefore, with limited resources, expending money on an inefficient treatment cannot be accepted.

On the basis of the above, we uphold the filed appeal and quash the previous ruling, since the decision of the Health Service of Castilla-La Mancha, dated 11 June 2007, is in accordance with law.

**WE DECIDE:**

In regard to the appeal number 782/09, filed by the Health Service of Castilla-La Mancha against the ruling upheld by the Labor Court n. 2 of Ciudad Real, dated 7 February 2008, writ 429/07 about the fertility treatments, defendant Mrs. MONTSERRAT CAMACHO GARCÍA and revoking the aforementioned ruling, we absolve the defendant of carrying out the pretensions of the appellant.

This ruling shall be notified to both parties and the Prosecutor's Office of the Superior Court of Justice of Castilla-La Mancha (Albacete), stating that only a CASSATION APPEAL may be filed against the aforementioned ruling. The cassation appeal shall be presented before this Chamber within 10 DAYS AFTER the notification of the ruling, in accordance to Articles 219 and 228 of the Law on Labor Proceedings. The ruling's costs shall be provided by the appellant party if not in receipt of legal aid, before this Chamber, when preparing the appeal, by presenting the payment receipt on the current account n.

0044 0000 66 0782 08, which this Labor Court has in BANCO ESPAÑOL DE CRÉDITO, office n. 30001, in calle Marqués de Molins, n. 13, Albacete. The second option is to present a bank guarantee, in which the joint responsibility of the guarantor must be stated. In addition, the appellant who is not his successor in title or employee, or beneficiary of the Social Insurance or when the aforementioned is the Public Prosecutor's Office, the State, the Regional Communities, Local Entities, the Organizations that depend on them and those who had the right of legal aid, shall pay a deposit of 300 Euros, which shall be deposited in account n. 2410 of BANCO ESPAÑOL DE CRÉDITO, calle Barquillo n. 49, office 1006, Madrid, which the IV Labor Division of the Supreme Court has open and presenting the payment receipt to the Secretariat of the aforementioned Division.

The pertinent certifications shall be sent, in order to join them to the writ and joining the original copy to the Sentence Record.

We sign, pronounce and send the aforementioned ruling.