

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 00-10099

TEXAS CLINICAL LABS, INC., a Texas Corporation; TEXAS CLINICAL
LABS-GULF DIVISION, INC., a Texas Corporation,

Plaintiffs-Appellants,

VERSUS

KENNETH S. APFEL, Secretary, U.S. Dept. of Health & Human
Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
3:96-CV-571-R

December 22, 2000

Before JOLLY and DAVIS, Circuit Judges and RESTANI*, Judge.

PER CURIAM:**

The appellant, Clinical Laboratories, challenges as arbitrary
and capricious a formula approved by the Secretary to compute

*Judge, U.S. Court of International Trade, sitting by
designation.

**Pursuant to 5TH CIR. R. 47.5, the Court has determined that this
opinion should not be published and is not precedent except under
the limited circumstances set forth in 5TH CIR. R. 47.5.4.

reimbursement for certain health care providers for travel expenses. Appellants challenge two elements of the agency's travel allowance formula: (1) the 35 mile per hour average used as the standard speed for delivery of services, and (2) the median cost per specimen.

Based upon our review of the record and considering the briefs and argument of counsel, we are satisfied that the Secretary's conclusions with respect to this second element—the median cost per specimen—is fully supported by the record and therefore is not arbitrary or capricious. However, with respect to the first element, the 35 mile per hour average speed, we are not satisfied that the record supports this figure. From the briefs, it appears that the Secretary relied on documents which were not made a part of the record to support this figure. Because the record does not provide a basis for the Secretary's use of the 35 mile per hour figure, we remand this case to the Secretary to give it an opportunity to include in the administrative record those documents it relied upon to support that decision and to provide a complete explanation for this decision. We find appellant's remaining arguments unpersuasive.

Accordingly, we remand this case to the Secretary for further proceedings consistent with this order.