

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

(Filed: August 8, 2011)

No. 07-290V

_____)	Influenza Vaccine;
_____)	Guillain-Barré Syndrome;
_____)	Chronic Inflammatory
Petitioner,)	Demyelinating Polyneuropathy;
v.)	Finding of Entitlement;
_____)	Damages Decision Based on
SECRETARY OF THE DEPARTMENT)	Proffer
OF HEALTH AND HUMAN SERVICES,)	
_____)	
Respondent.)	
_____)	

Anne Carrion Toale, for petitioner, Sarasota, FL.

Lisa Ann Watts, for respondent, Washington, DC.

DECISION¹

On May 8, 2007, _____ (“petitioner”), filed a petition for compensation alleging that she suffered certain injuries as a result of receiving a vaccination. Among the injuries petitioner alleged that she had suffered as a result of receiving a trivalent influenza vaccination was Guillain-Barré Syndrome (GBS) or chronic inflammatory demyelinating polyneuropathy (CIDP). She sought an award under the National Vaccine Injury Compensation Program, National Vaccine Injury Compensation Program² (the Act

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’ 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or 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 The National Vaccine Injury Compensation Program is set forth in Part 2 of

or the Program). 42 U.S.C. §§ 300aa-1 to -34 (2006).

On August 1, 2008, the undersigned issued a Ruling on Entitlement. On August 25, 2008, the undersigned conducted a status conference to discuss the parties' plan for resolving damages. See 8/29/2008 Order. On August 8, 2011, respondent filed a Proffer on Award of Compensation (Proffer), representing therein petitioner's agreement to the terms of the proffer. Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer. Pursuant to the terms stated in the attached Proffer, the court awards petitioners:

1. A lump sum of \$895,012.74, representing compensation for the life care expenses expected to be incurred during the first year after judgment (\$352,319.78), lost earnings (\$280,990.96), pain and suffering (\$227,524.67), and part unreimbursable expenses (\$34,177.33), in the form of a check payable to petitioner, [REDACTED]
2. A lump sum payment of \$20,396.38, representing compensation for the reimbursement of the Florida Medicaid lien, payable jointly to petitioner and

Agency for Health Care Administration
Medicaid TPL Recovery Unity
ACS Recovery Services
P.O. Box 12188
Tallahassee, FL 32317-2188
Attn: Ms. Nika Ervin

Petitioner agrees to endorse this payment to ACS Recovery Services.

3. A lump sum payment of \$41,412.43, representing compensation for the reimbursement of the State of Missouri Medicaid lien, payable jointly to petitioner and

Missouri HealthNet Division
Cost Recovery Unit
P.O. Box 6500
Jefferson City, Missouri 65102-6500

Petitioner agrees to endorse this payment to Missouri HealthNet Division.

the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

4. An amount sufficient to purchase an annuity contract, subject to the conditions described in paragraph II.D. of the attached Proffer, paid to the life insurance company from which the annuity will be purchased.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.³

IT IS SO ORDERED.

s/ Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

_____)	<u>ECF</u>
)	
Petitioner,)	No. 07-290V
)	
v.)	Chief Special Master
)	Patricia Campbell-Smith
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

The respondent engaged life care planner Janet Toney, MA, LPC, CRC, CDMS, CCM, CLCP, to provide an estimation of _____ future vaccine-injury related needs. For the purposes of this proffer, the term “vaccine related” is as described in the special master’s Ruling on Entitlement issued July 31, 2008. All items of compensation identified in the life care plan are supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for _____, attached hereto as Tab A.¹ Respondent proffers that _____ should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Tab A. Petitioner agrees.

¹ The chart at Tab A illustrates the annual benefits provided by the life care plan. The annual benefit years run from the date of judgment up to the first anniversary of the date of judgment, and every year thereafter up to the anniversary of the date of judgment.

B. Lost Earnings

The parties agree that based upon the evidence of record, [REDACTED] has suffered a past loss of earnings and will not be gainfully employed in the future. Therefore, respondent proffers that [REDACTED] should be awarded lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Respondent proffers that the appropriate award for [REDACTED] lost earnings is \$280,990.96. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that [REDACTED] should be awarded \$227,524.67 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

D. Past Unreimbursable Expenses

Evidence supplied by petitioner documents [REDACTED]'s expenditure of past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$34,177.33. Petitioner agrees.

E. Medicaid Liens

Respondent proffers that petitioner should be awarded funds to satisfy two State Medicaid liens: one from the State of Florida in the amount of \$20,396.38, and one from the State of Missouri in the amount of \$41,412.43. These payments represent full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action these States may have against any individual as a result of any Medicaid payments the States have made to or on behalf of [REDACTED]

██████████ from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about November 3, 1997, under Title XIX of the Social Security Act.

II. Form of the Award

The parties recommend that the compensation provided to ██████████ should be made through a combination of lump sum payments and future annuity payments as described below, and request that the special master's decision and the Court's judgment award the following:

A. A lump sum payment of \$895,012.74, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$352,319.78), lost earnings (\$280,990.96), pain and suffering (\$227,524.67), and past unreimbursable expenses (\$34,177.33), in the form of a check payable to petitioner, ██████████

B. A lump sum payment of \$20,396.38, representing compensation for the reimbursement of the Florida Medicaid lien, payable jointly to petitioner and

Agency for Health Care Administration
Medicaid TPL Recovery Unit
ACS Recovery Services
P.O. Box 12188
Tallahassee, FL 32317-2188
Att: Ms. Nika Ervin

Petitioner agrees to endorse this payment to ACS Recovery Services.

C. A lump sum payment of \$41,412.43, representing compensation for the reimbursement of the State of Missouri Medicaid lien, payable jointly to petitioner and

Missouri HealthNet Division
Cost Recovery Unit
P.O. Box 6500
Jefferson City, Missouri 65102-6500

Petitioner agrees to endorse this payment to Missouri HealthNet Division.

D. An amount sufficient to purchase an annuity contract,² subject to the conditions described below, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab A attached hereto, paid to the life insurance company³ from which the annuity will be purchased.⁴ Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent years shall be provided through respondent's purchase of an annuity, which annuity shall make payments directly to petitioner, [REDACTED], only so long as [REDACTED] is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth in the chart at

² In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

³ The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

⁴ Petitioner authorizes the disclosure of certain documents filed by the petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

Tab A describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment.

1. Growth Rate

Respondent proffers that a four percent (4%) growth rate should be applied to all non-medical life care items, and a five percent (5%) growth rate should be applied to all medical life care items. Thus, the benefits illustrated in the chart at Tab A that are to be paid through annuity payments should grow as follows: four percent (4%) compounded annually from the date of judgment for non-medical items, and five percent (5%) compounded annually from the date of judgment for medical items. Petitioner agrees.

2. Life-contingent annuity

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as she, [REDACTED] is alive at the time that a particular payment is due. Written notice shall be provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of [REDACTED]'s death.

3. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

III. Summary of Recommended Payments Following Judgment

A.	Lump Sum paid to petitioner, [REDACTED]	\$ 895,012.74
B.	Reimbursement of Florida Medicaid lien:	\$ 20,396.38
C.	Reimbursement of Missouri Medicaid lien:	\$ 41,412.43
D.	An amount sufficient to purchase the annuity contract described above in section II. D.	

Respectfully submitted,

TONY WEST
Assistant Attorney General

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Acting Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
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Dated: August 8, 2011.