

[REDACTED]

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

[REDACTED]

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 11-266V
Special Master Christian J. Moran

Filed: March 25, 2014

Damages; decision based on proffer;
influenza vaccine; Guillain-Barré
syndrome; GBS

Nancy R. Meyers, Ward Black Law, Greensboro, NC, for Petitioner;
Michael P. Milmore, U.S. Department of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION AWARDING DAMAGES¹

On April 29, 2011, [REDACTED] filed a petition seeking compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-1 et seq., alleging that he suffered a severe case of Guillain-Barré syndrome (“GBS”) as well as related sequelae as a result of an influenza (“flu”) vaccine that he received on October 4, 2010. On January 29, 2014, the undersigned found that [REDACTED] is entitled to compensation under the Vaccine Act. See Decision, issued Jan. 29, 2014.

On March 20, 2014, respondent filed a Proffer on Award of Compensation, which petitioner agrees to. Based upon the record as a whole, the special master finds the proffer reasonable and that petitioner is entitled to an award as stated in the proffer. Pursuant to the attached Proffer, Appendix A, the court awards petitioner:

- A. A lump sum payment of \$680,244.27, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$212,476.96) lost earnings (\$100,000.00); pain and suffering (\$238,762.22) and past unreimbursable expenses (\$129,005.09), in the form of a check payable to petitioner [REDACTED] and**

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

B. A lump sum payment of \$4,686.71, representing compensation for satisfaction of the State of North Carolina Medicaid lien, payable jointly to petitioner and:

**Division of Medical Assistance
Office of the Controller
2022 Mail Service Center
Raleigh, NC 27699-2022
Medicaid/Health Choice ID: 950386521M**

Petitioner agrees to endorse this payment to the State of North Carolina.

C. An amount sufficient to purchase the annuity contract described in section II.C. of the attached Proffer.

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.

Any questions shall be directed to my law clerk, Mary Holmes, at (202) 357-6353.

IT IS SO ORDERED.

s/ Christian J. Moran
Christian J. Moran
Special Master



IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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)	<u>ECF</u>
Petitioner,)	No. 11-266V
v.)	Special Master Moran
)	
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 Laura Fox, MSN, RN, CNLCP, to provide an estimation of [REDACTED] 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 January 29, 2014. 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 [REDACTED] attached hereto as Tab A.¹ Respondent proffers that [REDACTED] 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.

B. Lost Earnings

The parties agree that based upon the evidence of record, [REDACTED] has suffered a past loss of earnings and will continue to suffer a loss of earnings in the future.

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.

[REDACTED]

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 \$100,000.00. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that [REDACTED] should be awarded \$238,762.22 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] expenditure of past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$129,005.09. Petitioner agrees.

E. Medicaid Lien

Respondent proffers that [REDACTED] should be awarded funds to satisfy the State of North Carolina lien in the amount of \$4,686.71, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of North Carolina may have against any individual as a result of any Medicaid payments the State of North Carolina has made to or on behalf of [REDACTED] from the date of his eligibility for benefits through the date of judgment in this case as a result of his vaccine-related injury suffered on or about October 4, 2010, under Title XIX of the Social Security Act.

II. Form of the Award

The parties recommend that the compensation provided to [REDACTED] should be made through a combination of lump sum payments and future annuity payments as described

[REDACTED]

below, and request that the special master's decision and the Court's judgment award the following:²

A. A lump sum payment of \$680,244.27, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$212,476.96), lost earnings (\$100,000.00), pain and suffering (\$238,762.22), and past unreimbursable expenses (\$129,005.09), in the form of a check payable to petitioner, [REDACTED]

B. A lump sum payment of \$4,686.71, representing compensation for satisfaction of the State of North Carolina Medicaid lien, payable jointly to petitioner and

Division of Medical Assistance
Office of the Controller
2022 Mail Service Center
Raleigh, NC 27699-2022
Medicaid/Health Choice ID: 950386521M

Petitioner agrees to endorse this payment to the State of North Carolina.

C. An amount sufficient to purchase an annuity contract,³ subject to the conditions described below, that will provide payments for the life care items contained in the joint life care plan, as illustrated by the chart at Tab A, attached hereto, paid to the life insurance company⁴

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

³ In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

⁴ 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.

[REDACTED]

from which the annuity will be purchased.⁵ 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 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 he, [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] death.

3. Guardianship

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

⁵ 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 (con't)

III. Summary of Recommended Payments Following Judgment

- | | | |
|----|---|--------------|
| A. | Lump Sum paid to petitioner, [REDACTED] | \$680,244.27 |
| B. | Medicaid Lien: | \$ 4,686.71 |
| C. | An amount sufficient to purchase the annuity contract described above in section II. C. | |

Respectfully submitted,

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Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
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/S/MICHAEL P. MILMOE
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Dated: March 20, 2014

ITEMS OF COMPENSATION	G.R. *	M	Lump Sum Compensation															
			Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9							
Lost Earnings			100,000.00															
Pain and Suffering			238,762.22															
Past Unreimbursable Expenses			129,005.09															
Medicaid Lien			4,686.71															
Annual Totals			684,930.98	147,060.71	147,325.67	188,367.51	147,912.71	150,903.93	148,550.03	149,669.51	149,244.35							

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.
 Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.
 As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner for Yr 1 life care expenses (\$212,476.96), lost earnings (\$100,000.00), pain and suffering (\$238,762.22), and past unreimbursable expenses (\$129,005.09): \$680,244.27.
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and the State of North Carolina, as reimbursement of the state's Medicaid lien: \$4,686.71
 Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.
 Annual amounts shall increase at the rates indicated above in column G.R., compounded annually from the date of judgment.
 Items denoted with an asterisk (*) covered by health insurance and/or Medicare.
 Items denoted with an "M" payable in twelve monthly installments totaling the annual amount indicated.

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 10 2023	Compensation Year 11 2024	Compensation Year 12 2025	Compensation Year 13 2026	Compensation Year 14 2027	Compensation Year 15 2028	Compensation Year 16 2029	Compensation Years 17-Life 2030-Life
Lost Earnings											
Pain and Suffering											
Past Unreimbursable Expenses											
Medicaid Lien											
Annual Totals				149,616.71	193,223.77	155,994.94	156,317.02	156,528.34	157,567.30	159,737.41	172,838.22

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner for Yr 1 life care expenses (\$212,476.96), lost earnings (\$100,000.00), pain and suffering (\$238,762.22), and past unreimbursable expenses (\$129,005.09): \$680,244.27.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and the State of North Carolina, as reimbursement of the state's Medicaid lien: \$4,686.71

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at the rates indicated above in column G.R., compounded annually from the date of judgment.

Items denoted with an asterisk (*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in twelve monthly installments totaling the annual amount indicated.