

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-279V

Filed: September 4, 2008

Not to be published.¹

JOHN ALARCON,

Petitioner,

v.

Vaccine Act; Proffer; Damages

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

DECISION²

This is an action seeking an award under the National Childhood Vaccine Injury Compensation Program (see 42 U.S.C. § 300aa-10 *et seq.*), on account of an injury to the petitioner, John Alarcon. On June 26, 2006, the respondent conceded that the petitioner was entitled to compensation.

After discussions between the parties, and the preparation of life care plans, on September 3, 2008, respondent filed a document entitled “Respondent's Proffer on Award of Compensation.” On September 4, 2008, petitioner’s counsel represented via email to my staff that petitioner accepts the respondent’s Proffer as a reasonable measure of the amount of the award in this case.

¹This document will not be sent to electronic publishers as a formally “published” opinion. However, because this document contains a reasoned explanation for my action in this case, I intend to post this document 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). Therefore, each party has 14 days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, this entire document will be available to the public. *Id.* See also 42 U.S.C. § 300aa-12(d)(4)(B).

²In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in accordance with this Decision.

I have reviewed respondent's Proffer, and find that the document describes appropriate compensation in this case pursuant to 42 U.S.C. § 300aa-15(a). I hereby order that compensation be awarded based on the Proffer. Specifically, I order that respondent make lump sum payments and purchase an annuity contract as follows:

1. Lump sums

In the Proffer, the parties have agreed that the petitioner is entitled to immediate compensation totaling **\$ 713, 529.78**, based on the following lump sums:

- A lump sum payment of \$ 19,569.66, representing life care expenses for the first year after judgment;
- A lump sum payment of \$ 200,000.00, representing past and future pain and suffering; and
- A lump sum in the amount of \$ 493,960.12, representing lost earnings.

2. Annuity

The parties agree that the compensation for future unreimbursable expenses beyond the first year post-judgment shall be paid in the form of an annuity, which shall be purchased as soon as practicable after entry of judgment. Accordingly, pursuant to 42 U.S.C. § 300aa-15(f)(4), I order respondent to purchase, and take ownership of, an annuity contract from an insurance company for Mr. Alarcon's benefit,³ pursuant to which the insurance company will agree to make

³ The annuity contract shall be purchased from an insurance company that meets the following criteria, adapted from the Proffer; these criteria appear to be based upon the December 1990 draft of the Uniform Periodic Payment of Judgments Act.

- 1) has a minimum of \$250,000,000 of capital and surplus, exclusive of any mandatory security valuation reserve; and
- 2) has 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 Investors 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.

periodic payments to Mr. Alarcon for the rest of his life, commencing on the first anniversary of the date of judgment. The amount of the annuity payments in each year will be calculated based on the spreadsheet attached to the Proffer, which I attached to this Decision.

/s/George L. Hastings, Jr.

George L. Hastings, Jr.
Special Master

(Attachments)

Appendix A: Items of Compensation for John Alarcon

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Year 3	Compensation Year 4	Compensation Year 5	Compensation Year 6	Compensation Year 7	Compensation Years 8-10
				2008	2009	2010	2011	2012	2013	2014	2015-2017
Medicare Part B Premium and Ded.	5%		M						1,291.80	1,291.80	1,291.80
Physiatrist	5%	*		348.00	348.00	348.00	348.00	348.00	34.80	34.80	34.80
Psychiatric Treatment	0%			225.00							
Home Health Aide	4%		M	4,836.00	4,836.00	3,224.00	1,612.00	1,612.00	1,612.00	1,612.00	1,612.00
Case Management	4%			372.00	372.00	372.00	372.00	372.00	124.00	124.00	124.00
Neurontin	5%	*	M	2,483.04	2,483.04	2,483.04	2,483.04	2,483.04			
Methadone	5%			101.94	101.94	101.94	101.94	101.94	101.94	101.94	101.94
Lexapro	5%	*		1,079.88	1,079.88	1,079.88	1,079.88	1,079.88			
Medicare Part D Deductible	5%								275.00	275.00	275.00
RX Drug Plan Premium	5%								277.20	277.20	277.20
RX Drug Costs	5%								1,604.04	1,604.04	1,604.04
Individual Therapy/ Counseling	4%	*		5,760.00	2,880.00	1,800.00	900.00	900.00	900.00		
Occupational Therapy	4%			2,880.00	1,440.00	1,440.00	1,440.00	1,440.00			
YMCA	4%			518.00	468.00	468.00	468.00	468.00	468.00	468.00	468.00
Shoulder Support Strap	4%	*		49.95		49.95		49.95		9.99	5.00
Memory Foam Mattress	4%			374.99	37.50	37.50	37.50	37.50	37.50	37.50	37.50
Whirlpool for Tub	4%			108.16							
Swivel Seat Car	4%			22.95	11.48	11.48	11.48	11.48	11.48	11.48	11.48
Automatic Jar Opener	4%			49.95	5.00	5.00	5.00	5.00	5.00	5.00	5.00
One Touch Can Opener	4%			19.95	2.00	2.00	2.00	2.00	2.00	2.00	2.00
Open-it Universal Opener	4%			7.95	1.59	1.59	1.59	1.59	1.59	1.59	1.59
Ring Zipper Pulls	4%			4.95	4.95	4.95	4.95	4.95	4.95	4.95	4.95
Electric Panasonic Razor	4%			99.99	10.00	10.00	10.00	10.00	10.00	10.00	10.00
Hand Held Shower	4%			40.00	5.71	5.71	5.71	5.71	5.71	5.71	5.71
Adjustable Tub & Shower Chair	4%			34.99	17.50	17.50	17.50	17.50	17.50	17.50	17.50
Grab Bar	4%			34.99							
Curved Bath Brush	4%			20.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00
Basic Assistive Device Kit	4%			50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00
Easy Reach Seat Belt Handle	4%			8.99	4.50	4.50	4.50	4.50	4.50	4.50	4.50
Hands Free Hair Dryer Stand	4%			37.99							
Lost Earnings				493,960.12							
Pain and Suffering				200,000.00							

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				2008	2009	2010	2011	2012	2013	2014	2015-2017
Annual Totals				713,529.78	14,169.09	11,527.04	8,965.09	9,015.04	6,849.01	5,959.00	5,954.01

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 (\$19,569.66), for lost future earnings (\$493,960.12) and pain and suffering (\$200,000.00): \$713,529.78.

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 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 12 monthly installments totaling the annual amount indicated..

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ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 11	Compensation Years 12-15	Compensation Year 16	Compensation Years 17-30	Compensation Years 31-Life
				2018	2019-2022	2023	2024-2037	2038-Life
Annual Totals				6,854.01	5,954.01	6,730.01	5,830.01	4,070.21

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.

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