

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: December 13, 2012

* * * * *

SAEID B. MOJABI and PARIVASH
VAHABI, as parents and legal
representatives of their minor son,
RYAN B. MOJABI,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

* UNPUBLISHED
*
* No. 06-227V
*
*
* Chief Special Master
* Campbell-Smith
*
* Proffer on Award of
* Compensation; Measles-
* Mumps-Rubella (MMR);
* Table Injury; Encephalitis.

David L. Terzian, Rawls, McNelis and Mitchell, P.C., Richmond, VA, for petitioners.

Traci R. Patton, U.S. Dep’t of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On March 23, 2006, Saeid Mojabi and Parivash Vahabi (petitioners), as the parents and legal representatives of their minor son, Ryan, filed a petition pursuant to the

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.

National Vaccine Injury Compensation Program (“Vaccine Program”).² Petitioners alleged that as a result of “all the vaccinations administered to [Ryan] from March 25, 2003, through February 22, 2005, and more specifically, measles-mumps-rubella (MMR) vaccinations administered to him on December 19, 2003 and May 10, 2004,” Ryan suffered “a severe and debilitating injury to his brain, described as Autism Spectrum Disorder (‘ASD’).” Petition at 1. Petitioners specifically asserted that Ryan “suffered a Vaccine Table Injury, namely, an encephalopathy” as a result of his receipt of the MMR vaccination on December 19, 2003. *Id.* In the alternative, petitioners asserted that “as a cumulative result of his receipt of each and every vaccination between March 25, 2003 and February 22, 2005, Ryan has suffered . . . neuroimmunologically mediated dysfunctions in the form of asthma and ASD.” *Id.* at 1-2.

On June 9, 2011, respondent filed a supplemental report pursuant to Vaccine Rule 4(c) stating it was respondent’s view that Ryan suffered a Table injury under the Vaccine Act – namely, an encephalitis within five to fifteen days following receipt of the December 19, 2003 MMR vaccine, *see* 42 C.F.R. § 100.3(a)(III)(B), and that this case is appropriate for compensation under the terms of the Vaccine Program. *See* Resp’t Report, June 1, 2012, at 3-5. This filing followed: (1) the conduct of two fact hearings; (2) petitioners’ determined efforts to obtain medical records from Ryan’s emergent treatment in Tehran; and (3) the issuance of a fact ruling by the undersigned.

This case then moved into the damages phase, and the parties worked together to determine the proper amount of damages to be awarded to petitioners. On December 12, 2012, respondent’s counsel filed Respondent’s Proffer on Award of Compensation (“Proffer” attached as Supplement A), with an accompanying life care plan.³

Based on the record as a whole, the undersigned finds that the Proffer is reasonable and appropriate and that petitioners are entitled to an award as stated in the Proffer. Pursuant to the terms stated in the Proffer, the court awards to petitioners an award as described below:

- **A lump sum payment of \$969,474.91**, in the form of a check payable to petitioners as guardian(s)/conservator(s) of Ryan B. Mojabi, for the benefit of Ryan B. Mojabi, representing compensation for lost future earnings

² The National Vaccine Injury Compensation Program is set forth in Part 2 of 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 “Act”). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

³ The Items of Compensations of Ryan B. Mojabi is attached as Appendix A to the Proffer. *See* Appendix A, Proffer.

(\$648,132.74), pain and suffering (\$202,040.17), and life care expenses for Year One (\$119,302.00). No payment is to be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of Ryan B. Mojabi's estate.

- **A lump sum payment of \$20,000.00**, in the form of a check payable to petitioners, Saeid B. Mojabi and Parivash Vahabi, representing compensation for past unreimbursable expenses.
- **A lump sum payment of \$480.34**, in the form of a check payable jointly to petitioners, Saeid B. Mojabi and Parivash Vahabi, and the

Department of Health Care Services
Recovery Branch -- MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421
Attn: Ms. Leslie Nowack

representing compensation for the satisfaction of the State of California Medicaid lien. Petitioners agree to endorse this payment to the State of California.

- **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.

Proffer at II.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT**, in accordance with the terms of the parties' Proffer.⁴

IT IS SO ORDERED.

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

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

SAEID B. MOJABI and PARIVASH)	
VAHABI, as parents and legal)	
representatives of their minor son,)	
RYAN B. MOJABI,)	
)	
Petitioners,)	No. 06-227V
)	Chief Special Master
v.)	Patricia Campbell-Smith
)	ECF
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

Respondent engaged life care planner, Laura Fox, MSN, RN, CNLCP, to provide an estimation of Ryan B. Mojabi’s future vaccine-injury related needs. Ms. Fox worked jointly with petitioners’ life care planner, Susan Riddick-Grisham, in preparing a joint life care plan. 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 Ryan B. Mojabi, attached hereto as Tab A.¹ Respondent proffers that Ryan B. Mojabi should be awarded all items of compensation set forth in the joint life care plan and illustrated by the chart attached at Tab A. Petitioners agree.

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 Future Earnings

The parties agree that based upon the evidence of record, Ryan B. Mojabi will not be gainfully employed in the future. Therefore, respondent proffers that Ryan B. Mojabi should be awarded lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(B). Respondent proffers that the appropriate award for Ryan B. Mojabi's lost future earnings is \$648,132.74. Petitioners agree.

C. Pain and Suffering

Respondent proffers that Ryan B. Mojabi should be awarded \$202,040.17 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). Petitioners agree.

D. Past Unreimbursable Expenses

Evidence supplied by petitioners documents their expenditure of past unreimbursable expenses related to Ryan B. Mojabi's vaccine-related injury. Respondent proffers that petitioners should be awarded past unreimbursable expenses in the amount of \$20,000.00. Petitioners agree.

E. Medicaid Lien

Respondent proffers that Ryan B. Mojabi should be awarded funds to satisfy the State of California lien in the amount of \$480.34, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of California may have against any individual as a result of any Medicaid payments the State of California has made to or on behalf of Ryan B. Mojabi 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 January 1, 2004, under Title XIX of the Social Security Act.

II. Form of the Award

The parties recommend that the compensation provided to Ryan B. Mojabi 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 \$969,474.91, representing compensation for lost future earnings (\$648,132.74), pain and suffering (\$202,040.17), and life care expenses for Year One (\$119,302.00), in the form of a check payable to petitioners as guardian(s)/conservator(s) of Ryan B. Mojabi, for the benefit of Ryan B. Mojabi. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of Ryan B. Mojabi's estate;

B. A lump sum payment of \$20,000.00, representing compensation for past unreimbursable expenses, payable to Saeid B. Mojabi and Parivash Vahabi, petitioners;

C. A lump sum payment of \$480.34, representing compensation for satisfaction of the State of California Medicaid lien, payable jointly to petitioners and

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Petitioners agree to endorse this payment to the State of California.

D. An amount sufficient to purchase the annuity contract(s),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(ies) 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(ies), which annuity(ies) shall make payments directly to petitioners as guardian(s)/conservator(s) of the estate of Ryan B. Mojabi, for the benefit of Ryan B. Mojabi, only so long as Ryan B. Mojabi is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to petitioners in monthly, quarterly, annual or other installments. The "annual amounts" set forth in the chart at Tab A

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 Petitioners authorize the disclosure of certain documents filed by the petitioners 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.

describe only the total yearly sum to be paid to petitioners 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. Petitioners agree.

2. Life-contingent annuity(ies)

Petitioners will continue to receive the annuity payments from the Life Insurance Company(ies) only so long as Ryan B. Mojabi 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(ies) within twenty (20) days of Ryan B. Mojabi's death.

3. Guardianship

No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of Ryan B. Mojabi's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of Ryan B. Mojabi, any such payment shall be made to the party or parties appointed by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of Ryan B. Mojabi upon submission of written documentation of such appointment to the Secretary.

III. Summary of Recommended Payments Following Judgment

A.	Lump Sum paid to petitioners as guardian(s)/conservator(s) of Ryan B. Mojabi's estate:	\$ 969,474.91
B.	Lump sum paid to petitioners:	\$ 20,000.00
C.	Medicaid Lien:	\$ 480.34
D.	An amount sufficient to purchase the annuity contract(s) described above in section II. D.	

Respectfully submitted,

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Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
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Dated:

Appendix A: Items of Compensation for Ryan Mojabi

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Year 3	Compensation Years 4-5	Compensation Year 6	Compensation Year 7	Compensation Year 8	Compensation Year 9
				2012	2013	2014	2015-2016	2017	2018	2019	2020
Medicare Part B Premium	5%		M								
Medicare Part B Deductible	5%										
ST Eval	4%	*		262.50	262.50	262.50	262.50	262.50	262.50	262.50	262.50
OT Eval	4%	*		262.50	262.50	262.50	262.50	262.50	262.50	262.50	262.50
Neuropsych Eval	4%					2,750.00		2,750.00			2,750.00
Voc Eval	4%										
ABA Therapy	4%		M	52,800.00	15,840.00						
ST	4%		M	5,472.00	5,472.00	5,472.00	5,472.00	5,472.00			
OT	4%		M	5,472.00	5,472.00	5,472.00	5,472.00	5,472.00			
Auditory Integration Training	4%			1,600.00							
Social Skills Training	4%		M				1,750.00	1,750.00	1,750.00		
Comprehensive Reading	4%		M					7,344.00	7,344.00	7,344.00	7,344.00
Case Mngt	4%		M	3,960.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00
iPad	4%			399.00				399.00			
Apps for iPad	4%			100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Home Security System Install	0%			400.00							
Home Security System	4%		M	468.00	468.00	468.00	468.00	468.00	468.00	468.00	468.00
Respite Care	4%		M	45,000.00	45,000.00	45,000.00	45,000.00	45,000.00	45,000.00	45,000.00	45,000.00
Adult Living	4%		M								
Functional Medicine Eval	4%			1,480.00	740.00						
Camp Harmon	4%			726.00	726.00	726.00	726.00	726.00	726.00	726.00	726.00
Recreational Activities	4%		M	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00
Lost Future Earnings				648,132.74							
Pain and Suffering				202,040.17							
Past Unreimbursable Expenses				20,000.00							
Medicaid Lien				480.34							
Annual Totals				989,955.25	76,563.00	62,733.00	61,733.00	72,226.00	58,133.00	56,383.00	59,133.00

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 the court-appointed guardian(s)/ conservators(s) of the estate of Ryan B. Mojabi for the benefit of Ryan B. Mojabi, for lost future earnings (\$648,132.74), pain and suffering (\$202,040.17), and Yr 1 life care expenses (\$119,302.00): \$969,474.91.
 As soon as practicable after entry of judgment, respondent shall make the following payment to petitioners, Saeid B. Mojabi and Parivash Vahabi, for past un-reimbursable expenses: \$20,000.00.
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioners and the State of California, as reimbursement of the State's Medicaid lien: \$480.34.
 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." above, compounded annually from the date of judgment.
 Items denoted with an asterisk (*) covered by health insurance and/or Medicare.
 In respondent's discretion items denoted by "M" may be paid in twelve monthly installments totaling annual amount indicated.

Appendix A: Items of Compensation for Ryan Mojabi

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 10 2021	Compensation Year 11 2022	Compensation Year 12 2023	Compensation Year 13 2024	Compensation Year 14 2025	Compensation Years 15-56 2026-2067	Compensation Years 57-Life 2068-Life
Medicare Part B Premium	5%		M					1,198.80	1,198.80	1,198.80
Medicare Part B Deductible	5%							140.00	140.00	140.00
ST Eval	4%	*		262.50	262.50	262.50	262.50	52.50	52.50	52.50
OT Eval	4%	*		262.50	262.50	262.50	262.50	52.50	52.50	52.50
Neuropsych Eval	4%					2,750.00				
Voc Eval	4%							3,500.00		
ABA Therapy	4%		M							
ST	4%		M							
OT	4%		M							
Auditory Integration Training	4%									
Social Skills Training	4%		M							
Comprehensive Reading	4%		M	7,344.00						
Case Mngt	4%		M	1,320.00	1,320.00	1,320.00	1,320.00			
iPad	4%				399.00					
Apps for iPad	4%			100.00	100.00	100.00	100.00			
Home Security System Install	0%									
Home Security System	4%		M	468.00	468.00	468.00	468.00			
Respite Care	4%		M	45,000.00	45,000.00	45,000.00	45,000.00			
Adult Living	4%		M					43,470.00	43,470.00	43,470.00
Functional Medicine Eval	4%									
Camp Harmon	4%			726.00	726.00	726.00	726.00			
Recreational Activities	4%		M	900.00	900.00	900.00	900.00	1,140.00	1,140.00	
Lost Future Earnings										
Pain and Suffering										
Past Unreimbursable Expenses										
Medicaid Lien										
Annual Totals				56,383.00	49,438.00	51,789.00	49,039.00	49,553.80	46,053.80	44,913.80

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 the court-appointed guardian(s)/ conservators(s) of the estate of Ryan B. Mojabi for the benefit of Ryan B. Mojabi, for lost future earnings (\$648,132.74), pain and suffering (\$202,040.17), and Yr 1 life care expenses (\$119,302.00): \$969,474.91.
 As soon as practicable after entry of judgment, respondent shall make the following payment to petitioners, Saeid B. Mojabi and Parivash Vahabi, for past un-reimbursable expenses: \$20,000.00.
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioners and the State of California, as reimbursement of the State's Medicaid lien: \$480.34.
 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." above, compounded annually from the date of judgment.
 Items denoted with an asterisk (*) covered by health insurance and/or Medicare.
 In respondent's discretion items denoted by "M" may be paid in twelve monthly installments totaling annual amount indicated.