

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**  
**E-Filed: March 12, 2012**

* * * * *	*	UNPUBLISHED
GILBERT PLACENCIA	*	
	*	No. 10-881V
Petitioner,	*	
	*	Chief Special Master
v.	*	Campbell-Smith
	*	
SECRETARY OF THE	*	Proffer on Award of Compensation;
DEPARTMENT OF	*	Influenza ("Flu") Vaccination;
HEALTH AND HUMAN SERVICES,	*	Pneumococcal Conjugate
	*	Vaccination ("PCV"); Adhesive
Respondent.	*	Capsulitis; Shoulder Dysfunction;
	*	Myofascial Pain
* * * * *	*	

Jane Morrow, Otorowski, Johnson, Morrow & Golden, PLLC, Bainbridge Island, WA, for petitioner.

Alexis Babcock, U.S. Dep't of Justice, Washington, DC, for respondent.

**DECISION AWARDING DAMAGES<sup>1</sup>**

On December 27, 2010, Gilbert Placencia ("petitioner") filed a petition, seeking compensation under the National Vaccine Injury Compensation Program ("Vaccine Program").<sup>2</sup>

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<sup>1</sup> 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.

Petitioner alleges that as a result of his receipt of the influenza (“flu”) and pneumococcal conjugate (“PCV”) vaccinations on October 6, 2009, he thereafter suffered from adhesive capsulitis, shoulder dysfunction, and myofascial pain. Pet. at 1.

On March 28, 2011, respondent’s counsel filed a Rule 4 Report, conceding that petitioner’s “left shoulder injuries as well as residua from the left shoulder injuries were caused-in-fact by the vaccinations he received.” Rule 4 Report at 8. However, respondent maintained that petitioner’s “generalized pain and conditions involving the right upper extremity, feet, back, or any other body part are not vaccine-related.” *Id.* at 8-9.

On April 6, 2011, the undersigned issued an Order to Proceed to a Damages Determination. Order, Apr. 6, 2011.

Accordingly, the parties engaged life care planners to confer and finalize an estimation of petitioner’s future vaccine injury-related needs. On March 12, 2012, respondent filed a life care plan. See Life Care Plan Cost Projections Analysis, Resp’t’s Ex. A, Mar. 12, 2012.

That same day, respondent filed a Proffer on Award of Compensation (“Proffer”). Petitioner agrees with all aspects of the Proffer.

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

- A lump sum payment of **\$128,051.44**, in the form of a check payable to petitioner, **Gilbert Placencia**, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$4,123.46), lost earnings (\$3,972.80), pain and suffering (\$116,151.97), and past unreimbursable expenses (\$3,803.21).
- An amount sufficient to purchase an annuity contract, subject to the conditions described in paragraph II.B of the attached Proffer, paid to the life insurance company from which the annuity will be purchased.

Proffer at II.

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<sup>2</sup> 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 Act are to 42 U.S.C.A. § 300aa.

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.<sup>3</sup>

**IT IS SO ORDERED.**

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

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<sup>3</sup> 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**

_____	)	
GILBERT PLACENCIA,	)	
	)	
Petitioner,	)	No. 10-881V
v.	)	Chief Special Master
	)	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 Linda Curtis, RN, MS, CCM, CNLCP, to provide an estimation of Gilbert Placencia's future vaccine-injury related needs. For the purposes of this proffer, the term "vaccine related" is as described in the special master's Order to Proceed to a Damages Determination, dated April 6, 2011. All items of compensation identified in the final life care plan, filed on March 12, 2012, as Respondent's Exhibit A, are supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for Gilbert Placencia, attached hereto as Appendix A.<sup>1</sup> Respondent proffers that Gilbert Placencia should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Appendix A. Petitioner agrees.

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<sup>1</sup> The chart at Appendix 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, Gilbert Placencia has suffered a past loss of earnings and will not be gainfully employed in the future. Therefore, respondent proffers that Gilbert Placencia 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 Gilbert Placencia's lost earnings is \$3,972.80. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Gilbert Placencia should be awarded \$116,151.97 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 Gilbert Placencia's 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 \$3,803.21. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no outstanding Medicaid liens against him.

**II. Form of the Award**

The parties recommend that the compensation provided to Gilbert Placencia 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 \$128,051.44, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$4,123.46), lost earnings (\$3,972.80), pain and suffering (\$116,151.97), and past unreimbursable expenses (\$3,803.21), in the form of a check payable to petitioner, Gilbert Placencia.

B. An amount sufficient to purchase an annuity contract,<sup>2</sup> 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 company<sup>3</sup> from which the annuity will be purchased.<sup>4</sup> 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, Gilbert Placencia, only so long as Gilbert Placencia is alive at the time a particular payment is

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

<sup>3</sup> 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.

<sup>4</sup> 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.

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, Gilbert Placencia, 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 Gilbert Placencia'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, Gilbert Placencia:   | <b>\$128,051.44</b> |
| B. | An amount sufficient to purchase the annuity contract described above in section II. B. |                     |

Respectfully submitted,

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Dated: March 12, 2012



## Appendix A: Items of Compensation for Gilbert Placencia

Page 1 of 2

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Years 2-3	Compensation Years 4-5	Compensation Year 6	Compensation Years 7-9	Compensation Years 10-Life
				2012	2013-2014	2015-2016	2017	2018-2020	2021-Life
Medicare Part B Premium	5%			359.96	359.96				
AARP Medicare Adv	0%								
PT Evals	4%	*		23.78	11.89	11.89	11.89	11.89	
OT Eval	4%	*		26.38	13.19	13.19	13.19	13.19	
Psych Eval	5%	*		11.40	1.14	1.14	1.14	1.14	1.14
Psychiatrist	5%	*		52.00	52.00	52.00	52.00	52.00	52.00
Bath Bench	4%			24.16			24.16		
Dressing Aids	4%			13.91			13.91		
Kitchen Aids	4%			200.00			200.00		
Raised Toilet Seat	4%			18.79			18.79		
Body Glove Cold Pack	4%			11.09	5.55	5.55	5.55	5.55	5.55
Hot Packs	4%			11.96	5.98	5.98	5.98	5.98	5.98
Gabapentin	5%	*		14.40	14.40	14.40	14.40	14.40	14.40
Melatonin	4%			11.99	11.99	11.99	11.99	11.99	11.99
Pristiq	5%	*		54.00	54.00	54.00	54.00	54.00	54.00
NSAID	5%	*		14.40	14.40	14.40	14.40	14.40	14.40
Narcotic Analgesics	5%	*		108.00	108.00	108.00	108.00	108.00	108.00
Volteren Gel	5%	*		54.00	54.00	54.00	54.00	54.00	54.00
Essential Hsehold Services	4%		M	1,458.44	1,458.44	1,458.44	1,458.44	1,458.44	
Nursing Home	4%		M						4,665.98
Primary Care Physician Est. Patient	4%	*		18.00	18.00	18.00	18.00	18.00	18.00
Primary Care Physician New Patient	4%	*		4.50	0.45	0.45	0.45	0.45	0.45
Rheumatology Established Patient	5%	*		12.00	12.00	12.00	12.00	12.00	12.00
Rheumatology New Patient	5%	*		12.00	1.20	1.20	1.20	1.20	1.20
Physical Med. & Rehab New Patient	5%	*		12.00	1.20	1.20	1.20	1.20	1.20
Physical Med. & Rehab Est. Patient	5%	*		12.00	6.00	6.00	6.00	6.00	6.00
CBC	5%	*		9.00	9.00	9.00	9.00	9.00	9.00
CMP	5%	*		9.00	9.00	9.00	9.00	9.00	9.00
Venipuncture	5%	*		9.00	9.00	9.00	9.00	9.00	9.00
Grab Bars	0%			16.65					
Pain Treatment Prgm	0%			1,540.65					
Lost Future Earnings				3,972.80					

**Appendix A: Items of Compensation for Gilbert Placencia**

Page 2 of 2

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Years 2-3	Compensation Years 4-5	Compensation Year 6	Compensation Years 7-9	Compensation Years 10-Life
				2012	2013-2014	2015-2016	2017	2018-2020	2021-Life
Pain and Suffering				116,151.97					
Past Unreimbursable Expenses				3,803.21					
Annual Totals				128,051.44	2,230.79	1,870.83	2,127.69	1,870.83	5,053.29

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 (\$4,123.46), lost earnings (\$3,972.80), pain and suffering (\$116,151.97), and past unreimbursable expenses (\$3,803.21): \$128,051.44.

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.