

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-251V

Filed: January 12, 2006

CINDY L. WYANT, *
*
*
Petitioner, *
*
v. *
*
SECRETARY OF THE DEPARTMENT OF *
HEALTH AND HUMAN SERVICES, *
*
Respondent. *

Charles M. Merriner, Anchorage, AK, for petitioner

Vincent Matanoski, U.S. Department of Justice, Washington, D.C., for respondent

DECISION ON DAMAGES

GOLKIEWICZ, Chief Special Master.

On May 7, 2003, respondent filed his Rule 4 Report conceding petitioner's entitlement to compensation in this case under the Vaccine Act for her vaccine-related injuries. The parties jointly engaged a life care planner for the purpose of ascertaining Cindy Wyant's long-term vaccine-related needs. On January 5, 2006, respondent filed his Proffer on Damages, including the chart entitled **Preliminary Analysis of LCP in Wyant** (Tab A). Respondent represented in his filing that petitioners acceded to the Secretary's proffer. The case is now ripe for decision.

After a complete review of the record, the court finds that petitioner, Cindy Wyant, is entitled to an award under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 et seq., as reflected in Respondent's Proffer on Award of Compensation and the attached chart, **Tab A: Preliminary Analysis of LCP in Wyant**. The court is convinced, based upon its experience and information in the record, that this award shall provide reasonable compensation to cover Cindy Wyant's vaccine-related expenses.

Form of Compensation Award

1. **Growth Rate:**

As indicated in Tab A, the appropriate growth rate for non-medical life care items is 4%, and the appropriate growth rate for medical life care items is 6%, compounded annually from the date of judgment.

2. **Lump Sum:**

A lump sum payment in the amount of **\$1,034,695.82**, representing life care expenses as set forth in the chart at Tab A (\$792,262.70), compensation for past and future pain and suffering (\$153,225.95), and compensation for past unreimbursed vaccine-related expenses (\$89,207.17) in the form of a check payable to Cindy Wyant, petitioner.

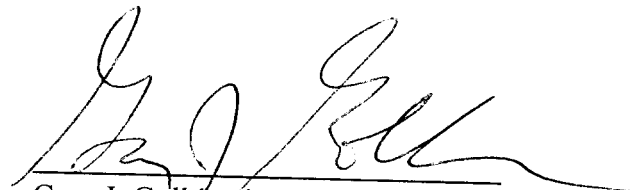
CONCLUSION

Petitioner is entitled to an award under the Vaccine Program to provide for compensable expenses as stated in the attached Tab A. Petitioner's award of compensation shall be in the form of a lump sum payment in the amount of \$1,034,695.82, representing life care expenses as set forth in the chart at Tab A (\$792,262.70), compensation for past and future pain and suffering (\$153,225.95), and compensation for past unreimbursed vaccine-related expenses (\$89,207.17) in the form of a check payable to petitioner.

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment according to this decision.¹

The undersigned takes this moment to thank respective counsel and petitioner herself for their extremely cooperative efforts in resolving this somewhat unique case. As shown by the parties, successful representation of adverse interests does not require adverse behavior.

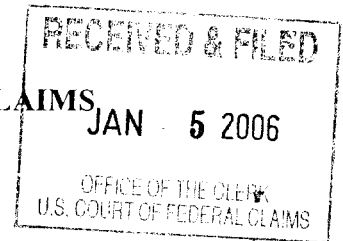
IT IS SO ORDERED.



Gary J. Golkiewicz
Chief Special Master

¹ Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a U.S. Court of Federal Claims judge.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS



CINDY WYANT,)
)
 Petitioner,)
)
 v.)
)
 SECRETARY OF HEALTH AND)
 HUMAN SERVICES,)
)
 Respondent.)

No. 03-251V
Chief Special Master Golkiewicz

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

Respondent proffers that petitioner's future vaccine-related injury needs, as identified by his life care planner and as supported by the evidence, are illustrated by the chart entitled Preliminary Analysis of LCP in Wyant – Present Year Dollars, attached hereto as Tab A.¹

Respondent proffers that petitioner should be awarded all items of compensation as illustrated by the chart attached at Tab A. Petitioner agrees.

B. Pain and Suffering

Respondent proffers that petitioner should be awarded \$153,225.95 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.

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.

C. Past Unreimbursable Expenses

Evidence supplied by petitioner documents her 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 \$89,207.17. Petitioner agrees.

II. Form of the Award

Petitioner has requested that compensation be provided to her in the form of a lump sum payment. Accordingly, the parties request that the Chief Special Master's decision and the Court's judgment award the following:

- A. A lump sum payment of \$1,034,695.82 representing life care expenses as set forth in the chart entitled Preliminary Analysis of LCP in Wyant – Present Year Dollars (\$792,262.70), compensation for past and future pain and suffering (\$153,225.95), and compensation for past unreimbursed vaccine-related expenses (\$89,207.17), in the form of a check payable to Cindy Wyant, petitioner.

Respectfully submitted,

PETER D. KEISLER
ASSISTANT ATTORNEY GENERAL

TIMOTHY P. GARREN
DIRECTOR
Torts Branch, Civil Division



VINCENT MATANOSKI
ACTING DEPUTY DIRECTOR
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
(202) 616-4124

Dated: January 3, 2006

PRELIMINARY ANALYSIS OF LCP IN WYANT - PRESENT YEAR DOLLARS

Prepared for Vince Matanoski, USDOJ
 By Robert S. Elgin, Structured Financial Associates, Inc.
 Petitioner: Cindy Wyant; DOB: 06/18/1951
 Year 1 Cash for LCP: \$132,166.46
 Annual Amounts Increase at the Rates Indicated Below
 Asterisk Indicates Medicare Coverage

Year	Year from Judgment	Age	Medicare Part B Premium 6%	Doctor Visits & Medicare Part B Deductible 6% *	Surgery 0%	Travel for Surgery 0%	Physical Therapy 6%	Medications 6%	Ibuprofen 800 mg 6%	Cyclobenzaprine 10 mg 6%	Travel for Non-surgery Health Care 4%
2005	0	54		720.00	43,930.00	7,000.00	880.00	4,845.20	185.88	341.88	9,018.00
2006	1	55		720.00			880.00	4,845.20	185.88	341.88	9,018.00
2007	2	56		720.00			880.00	4,845.20	185.88	341.88	9,018.00
2008	3	57		720.00			880.00	4,845.20	185.88	341.88	9,018.00
2009	4	58		720.00			880.00	4,845.20	185.88	341.88	9,018.00
2010	5	59		720.00			880.00	4,845.20	185.88	341.88	9,018.00
2011	6	60		720.00			880.00	4,845.20	185.88	341.88	9,018.00
2012	7	61		720.00			880.00	4,845.20	185.88	341.88	9,018.00
2013	8	62		720.00			880.00	4,845.20	185.88	341.88	9,018.00
2014	9	63		720.00			880.00	4,845.20	185.88	341.88	9,018.00
2015	10	64		720.00			880.00	4,845.20	185.88	341.88	9,018.00
2016	11	65	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2017	12	66	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2018	13	67	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2019	14	68	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2020	15	69	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2021	16	70	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2022	17	71	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2023	18	72	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2024	19	73	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2025	20	74	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2026	21	75	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2027	22	76	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2028	23	77	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2029	24	78	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2030	25	79	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2031	26	80	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
2032	27	81	938.40	232.00			880.00	4,845.20	185.88	341.88	9,018.00
Continuing for Life											

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 By Robert S. Elgin, Structured Financial Associates, Inc.
 Petitioner: Cindy Wyant; DOB: 06/18/1951
 Year 1 Cash for LCP: \$132,166.46
 Annual Amounts Increase at the Rates Indicated Below
 Asterisk Indicates Medicare Coverage

Year	Year from Judgment	Age	Home Mods 0%	Positioning Bolsters for Bed 4%	Massage Chair 4%	Ergonomic Desk Chair 4%	Self- propelled Vacuum 4%	Front Loading Washer/Dryer 4%	Dishwasher (GE) 4%	Food Processor 4%	Closet Organizer 4%	Jacuzzi Tub 4%
2005	0	54	26,730.00	225.00	1,900.00	324.00	409.00	2,700.00	559.00	110.00	189.00	1,553.00
2006	1	55		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2007	2	56		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2008	3	57		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2009	4	58		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2010	5	59		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2011	6	60		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2012	7	61		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2013	8	62		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2014	9	63		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2015	10	64		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2016	11	65		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2017	12	66		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2018	13	67		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2019	14	68		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2020	15	69		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2021	16	70		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2022	17	71		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2023	18	72		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2024	19	73		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2025	20	74		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2026	21	75		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2027	22	76		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2028	23	77		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2029	24	78		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2030	25	79		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2031	26	80		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
2032	27	81		45.00	126.67	21.60	51.13	225.00	46.58	13.75	12.60	103.53
Continuing for Life												

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 Annual Amounts Increase at the Rates Indicated Below
 Asterisk Indicates Medicare Coverage

Year	Year from Judgment	Age	Ergonomic Units for Kitchen 4%	Luggage w/ Pull Handles 4%	Dressers 4%	Bed 4%	Motor Vehicle/ Expenses 4%	Freezer 4%	Sewing Table 4%	Housekeeper 4%	Annual Total
2005	0	54	65.00	174.00	950.00	2,000.00	15,000.00	1,000.00	400.00	10,957.50	132,166.46
2006	1	55	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,930.86
2007	2	56	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,930.86
2008	3	57	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,930.86
2009	4	58	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,930.86
2010	5	59	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,930.86
2011	6	60	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,930.86
2012	7	61	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,930.86
2013	8	62	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,930.86
2014	9	63	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,930.86
2015	10	64	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,050.86
2016	11	65	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2017	12	66	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2018	13	67	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2019	14	68	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2020	15	69	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2021	16	70	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2022	17	71	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2023	18	72	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2024	19	73	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2025	20	74	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2026	21	75	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2027	22	76	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2028	23	77	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2029	24	78	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2030	25	79	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2031	26	80	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
2032	27	81	8.13	21.75	63.33	133.33	2,000.00	83.33	26.67	10,957.50	29,501.26
Continuing for Life											

CERTIFICATE OF SERVICE

I certify that on this 5th day of January, 2006, a copy of RESPONDENT'S PROFFER ON AWARD OF COMPENSATION, together with Tab A, was served, by first-class mail, postage pre-paid, upon:

Charles M. Merriner
3934 Apollo Drive
Anchorage, AK 99504
(907) 333-2946