

OFFICE OF SPECIAL MASTERS

No. 01-365V

Filed: October 20, 2005

ROBIN ROLLER and STEVE ROLLER, *
Parents and Next Friends of *
NICHOLAS GENE ROLLER, a minor, *

Petitioners, *

v. *

SECRETARY OF THE DEPARTMENT OF *
HEALTH AND HUMAN SERVICES, *

Respondent. *

Richard Gage, Gage & Moxley, P.C., Cheyenne, WY, for petitioners

Alexis Babcock, U.S. Department of Justice, Washington, D.C., for respondent

DECISION ON DAMAGES

GOLKIEWICZ, Chief Special Master.

On November 26, 2001, respondent filed his Rule 4 Report conceding petitioner's entitlement to compensation in this case under the Vaccine Act, on behalf of their minor son, Nicholas Gene Roller, for his vaccine-related injuries. Both parties engaged life care planners for the purpose of ascertaining Nicholas Gene Roller's long-term vaccine-related needs. On September 8, 2005, respondent filed his Proffer on Damages, including Items of Compensation for Nicholas Roller (Tab A). On September 12, 2005 petitioners' counsel, via telephone, acceded to the Secretary's proffer. The case is now ripe for decision.

After a complete review of the record, the court finds that petitioners, Steve Roller and Robin Roller, are 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 Damages and the attached chart, Tab A: Items of Compensation for Nicholas Gene Roller. The court is convinced, based upon its experience and information in the record, that this award shall provide reasonable compensation to cover Nicholas Gene Roller'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 **\$787,912.20**, representing compensation for lost future earnings (\$525,077.00), pain and suffering (\$167,413.00), and life care expenses for Year One (\$95,422.20), in the form of a check payable to petitioners as guardians/conservators of Nicholas Roller's estate, for the benefit of Nicholas Roller. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardians/conservators of Nicholas Roller's estate.

A lump sum payment in the amount of **\$8,570.00**, representing compensation for past unreimbursable expenses, payable to Robin Roller and Steve Roller, petitioners.

A lump sum payment in the amount of **\$401,500.00**, representing compensation for the present year cost of two years of Nicholas' residential care (for the years 2023 and 2024), payable to Hibernia National Bank - Beaumont, as Trustee, to establish an irrevocable reversionary trust for the benefit of Nicholas Gene Roller, by and among the United States as Grantor; Hibernia National Bank - Beaumont as Trustee; and petitioners as guardians/conservators.

A lump sum payment in the amount of **\$91,247.91**, representing compensation for satisfaction of the State of Oklahoma Medicaid lien, payable jointly to petitioners and

Oklahoma Health Care Authority
Lincoln Plaza
4545 N. Lincoln Boulevard
Suite 124
Oklahoma City, OK 73105-3413
Attn: Mr. Brian Hayes

Petitioners agree to endorse this payment to the Oklahoma Health Care Authority.

3. **Annuity:**

Section 15(f)(4) requires that payment of compensation be based on the net present value of the elements of compensation. One way of discounting to net present value is to use the cost

of an annuity to provide periodic payments to ~~DRAFT~~ projected needs of a petitioner for the remainder of his life. Special masters are specifically empowered by §15(f)(4) of the Act to order that the compensation awarded under the Program be used to purchase an annuity. The court considers it in Nicholas Gene Roller's best interest to order that the compensation for life care items awarded beyond year one post-judgment be paid in the form of an annuity, which annuity shall be purchased as soon as practicable after entry of judgment.

An amount sufficient to purchase an annuity contract(s), 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, paid to the life insurance company from which the annuity(ities) will be purchased. 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(ities), which annuity(ities) shall make payments directly to petitioners as guardians/conservators of the estate of Nicholas Roller, for the benefit of Nicholas Roller, only so long as Nicholas Roller is alive at the time a particular payment is due, for all items of care set forth at Tab A with the exception of the following:

- 1) Residential care beginning at Nicholas' age 12 in 2008 to life.
- 2) Aide level care expenses to assist with home visits while Nicholas is in residential care from ages 12 through 21, years 2008 through 2017.

The Life Insurance Company shall make payments directly to the reversionary Trust for the items specified in 3.(1) (residential care) and 3.(2) (aide level care) above, or costs above and beyond the negotiated items that are a direct result of Nicholas' remaining at home and are reasonably vaccine-related for the benefit of Nicholas Roller, only so long as Nicholas Roller is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to petitioners or the trust 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 petitioners and to the Trust and do not require that the payment be made in one annual installment.

The annuity company must meet the following criteria:¹

- 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+g, A+p, A+r or A+s;

¹ These criteria are taken from the December 1990 draft of the Uniform Periodic Payment of Judgments Act.

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- 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) Duff & Phelps Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+ or AAA.

4. **Life Expectancy:**

A finding on life expectancy is unnecessary because this annuity will be a lifetime annuity.

5. **Guardianship:**

No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardians/conservators of Nicholas Roller's estate.

CONCLUSION

Petitioners, as legal representatives of Nicholas Gene Roller, are entitled to an award under the Vaccine Program to provide for compensable expenses as stated in the attached Tab A. Petitioners' award of compensation shall be in the form of an annuity as provided for in paragraph 3 above, together with the following lump sum payments:

- 1. A lump sum payment in the amount of \$787,912.20, representing compensation for lost future earnings (\$525,077.00), pain and suffering (\$167,413.00), and life care expenses for Year One (\$95,422.20), in the form of a check payable to petitioners as guardians/conservators of Nicholas Roller's estate, for the benefit of Nicholas Roller.
- 2. A lump sum payment in the amount of \$8,570.00, representing compensation for past unreimbursable expenses, payable to Robin Roller and Steve Roller, petitioners.
- 3. A lump sum payment in the amount of \$401,500.00, representing compensation for the present year cost of two years of Nicholas' residential care (for the years 2023 and 2024), payable to Hibernia National Bank - Beaumont, as Trustee, to establish an irrevocable reversionary trust for the benefit of Nicholas Gene Roller, by and among the United States as Grantor; Hibernia National Bank - Beaumont as Trustee; and petitioners as guardians/conservators.

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An award for reimbursement of the state Medicaid lien in the amount of \$91,247.91, which amount shall be payable jointly to petitioners and the Medicaid Office of the State of Oklahoma.

In the absence of a motion for review filed pursuant to RCFC, Appendix J, the clerk is directed to enter judgment according to this decision.²

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

² 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.