

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 09-0483V
(Not to be published¹)

*
CHRISTINE MAINELLA, *
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Petitioner, *
*
*
v. *
*
*
SECRETARY OF HEALTH AND *
HUMAN SERVICES *
*
*
Respondent. *
*

Filed: November 20, 2012

Decision by Proffer; Damages;
Influenza Vaccine; Idiopathic
Thrombocytopenia Purpura

DECISION

HASTINGS, Special Master.

This is an action seeking an award under the National Vaccine Injury Compensation Program² on account of an illness suffered by Christine Mainella. On September 10, 2010, I issued a Ruling that petitioner is entitled to a Program award on account of her injury.

¹Because this document contains an 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, 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 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.*

²The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 *et seq.* (2006 ed.). Hereinafter, for ease of citation, all "§" references will be to 42 U.S.C. (2006 ed.).

After discussions between the parties, on November 9, 2012, respondent filed “Respondent’s Proffer on Award of Compensation.” That document indicates that Petitioner agrees that the amounts designated in the Proffer, and the attached Tab A, constitute an appropriate award in this case. Petitioner’s counsel, Joseph Pepper, in a telephone discussion with my law clerk on November 16, 2012, confirmed that petitioner agrees with respondent’s Proffer.

I have reviewed respondent’s Proffer and Tab A, and find that they define appropriate compensation in this case pursuant to 42 U.S.C. § 300aa-15(b). I conclude that compensation should be awarded based on those documents. I have attached to this Decision the Proffer and Tab A, as filed by respondent, and incorporate by reference said Proffer and Tab A into this Decision so as to become a part thereof. I order that respondent make lump sum payments and purchase the annuity contract(s) as described below.

1. Lump Sums

- Respondent shall make a lump sum payment of \$555,398.98, representing compensation for life care expenses for Year One following judgment (\$15,175.15), lost future earnings (\$356,901.07), pain and suffering (\$180,384.25), and past unreimbursable expenses (\$2,938.51), in the form of a check payable to Christine Mainella.

2. Annuity

I consider it in Christine Mainella’s best interest that 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. Accordingly, pursuant to 42 U.S.C. § 300aa-15(f)(4), I order respondent to purchase, and take ownership of, an annuity,³ pursuant to which the insurance company will agree to make periodic payments to Christine Mainella, commencing on the first anniversary of the date of judgment. The total amount of the annuity payments in each year will be calculated based on the 4-page summary of “Items of Compensation for Christine Mainella,” attached hereto as Tab A.

Each insurance company must meet the following criteria:

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

³To satisfy the conditions set forth herein, in respondent’s discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

- c) Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d) Fitch Credit Rating Company, Insurance Company ClaimsPaying Ability Rating: AA-, AA, AA+, or AAA.

Under the statute governing the Program, as well as the "Vaccine Rules" adopted by this court, the special master must now enter a decision endorsing that Proffer, and the clerk must enter judgment, in order to authorize payment of the award. See § 300aa-12(d)(3)(A) and (e)(3); § 300aa-13(a); Vaccine Rules 10(a), 11(a).⁴

Christine Mainella is entitled to an award under the Vaccine Act to provide compensation for her injury. The award shall be partly in the form of an annuity, and partly in the form of lump sum payments, as provided above.

In the absence of a timely-filed motion for review of this Decision, the clerk shall enter judgment in accord with this Decision.

IT IS SO ORDERED.

/s/ George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master

⁴The "Vaccine Rules of the United States Court of Federal Claims" are found in Appendix B of the Rules of the United States Court of Federal Claims.

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

CHRISTINE MAINELLA,)	
)	<u>ECF</u>
Petitioner,)	
v.)	No. 09-483V
)	Special Master
SECRETARY OF HEALTH)	George L. Hastings, Jr.
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 Shelly Kinney, RN, MSN, CCM, CNLCP, to provide an estimation of Christine Mainella’s future vaccine-injury related needs. For the purposes of this proffer, the term “vaccine related” is as described in the special master’s Ruling on Entitlement issued September 10, 2010. 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 Christine Mainella, attached hereto as Tab A.¹ Respondent proffers that Christine Mainella should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Tab A. Petitioner agrees.

B. Lost Future Earnings

The parties agree that based upon the evidence of record, Christine Mainella has suffered a past loss of earnings and will not be gainfully employed in the future. Therefore, respondent

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.

proffers that Christine Mainella 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 Christine Mainella's lost earnings is \$356,901.07. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Christine Mainella should be awarded \$180,384.25 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 Christine Mainella's 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 \$2,938.51. Petitioner agrees.

E. Medicaid Lien

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

II. Form of the Award

The parties recommend that the compensation provided to Christine Mainella 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 \$555,398.98, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$15,175.15), lost earnings (\$356,901.07), pain and suffering (\$180,384.25), and past unreimbursable expenses (\$2,938.51), in the form of a check payable to petitioner, Christine Mainella.

B. An amount sufficient to purchase an annuity contract,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 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, which annuity shall make payments directly to petitioner, Christine Mainella, only so long as Christine Mainella is alive at the time a particular payment is 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

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 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.

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 she, Christine Mainella, 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 Christine Mainella'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, Christine Mainella: | \$555,398.98 |
| B. | An amount sufficient to purchase the annuity contract described above in section II. B. | |

Respectfully submitted,

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Acting Assistant Attorney General

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Director
Torts Branch, Civil Division

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Dated: November 9, 2012

Appendix A: Items of Compensation for Christine Mainella

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Years 2-3	Compensation Year 4	Compensation Year 5	Compensation Year 6	Compensation Year 7	Compensation Years 8-9	Compensation Year 10
				2012	2013-2014	2015	2016	2017	2018	2019-2020	2021
Insurance Deductible & MOP	5%			3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	
COBRA Premium	5%		M						5,497.92	5,497.92	
Medigap F	5%		M								2,418.00
Medicare Part D	5%		M								7,569.40
Hematologist	5%	*									
Hematologist in FL	5%	*									
Psychologist	4%	*									
CBC	5%	*									
CMP	5%	*									
LFT	5%	*									
IVIG	5%	*									
Promacta	5%	*		720.00	720.00	720.00	720.00	720.00	720.00	720.00	
Prednisone	5%	*		84.00	84.00	84.00	84.00	84.00	84.00	84.00	
Educational Materials	4%			325.00	325.00	325.00	325.00	325.00	325.00	325.00	325.00
Electric Shaver	4%			54.99				54.99			
Adjustable Shower Seat	4%			29.88				29.88			
Medical ID Bracelet	4%			24.88				24.88			
Life Line Alert/Activation Fee	4%			662.00	612.00	612.00	612.00	612.00	612.00	612.00	612.00
Electric Toothbrush	4%			140.00		140.00			140.00		140.00
Replac. Toothbrush Heads	4%			100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Bleed Arrest	4%			117.00		16.00			16.00		16.00
Instant Cold Packs	4%			79.40	79.40	79.40	79.40	79.40	79.40	79.40	79.40
YMCA	4%			540.00	540.00	540.00	540.00	540.00	540.00	540.00	540.00
Personal Trainer	4%			480.00	480.00	480.00	480.00	480.00	480.00	480.00	480.00
Home Helper/Lawn Assistance	4%		M	8,504.00	8,504.00	8,504.00	8,504.00	8,504.00	8,504.00	8,504.00	8,504.00
Lawn & Garden Maintenance	4%										
Home Mods	4%			314.00							
Lost Future Earnings				356,901.07							
Pain and Suffering				180,384.25							
Past Unreimbursable Expenses				2,938.51							

Appendix A: Items of Compensation for Christine Mainella

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Years 2-3	Compensation Year 4	Compensation Year 5	Compensation Year 6	Compensation Year 7	Compensation Years 8-9	Compensation Year 10
				2012	2013-2014	2015	2016	2017	2018	2019-2020	2021
Annual Totals				555,398.98	14,444.40	14,600.40	14,444.40	14,554.15	20,098.32	19,942.32	20,783.80

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 petitioner for Yr 1 life care expenses (\$15,175.15), lost earnings (\$356,901.07), pain and suffering (\$180,384.25), and past unreimbursable expenses (\$2,938.51): \$555,398.98.

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.

At respondent's discretion items denoted "M" may be payable in twelve monthly installments totaling the annual amount indicated.

Appendix A: Items of Compensation for Christine Mainella

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 11 2022	Compensation Years 12-14 2023-2025	Compensation Years 15-24 2026-2035	Compensation Years 25-Life 2036-Life
Insurance Deductible & MOP	5%						
COBRA Premium	5%		M				
Medigap F	5%		M	2,418.00	2,418.00	2,418.00	2,418.00
Medicare Part D	5%		M	7,569.40	7,569.40	7,569.40	7,569.40
Hematologist	5%	*					
Hematologist in FL	5%	*					
Psychologist	4%	*					
CBC	5%	*					
CMP	5%	*					
LFT	5%	*					
IVIG	5%	*					
Promacta	5%	*					
Prednisone	5%	*					
Educational Materials	4%			325.00	325.00	325.00	325.00
Electric Shaver	4%			54.99	11.00	11.00	11.00
Adjustable Shower Seat	4%			29.88	5.98	5.98	5.98
Medical ID Bracelet	4%			24.88	4.98	4.98	4.98
Life Line Alert/Activation Fee	4%			612.00	612.00	612.00	612.00
Electric Toothbrush	4%			46.67	46.67	46.67	46.67
Replac. Toothbrush Heads	4%			100.00	100.00	100.00	100.00
Bleed Arrest	4%			5.33	5.33	5.33	5.33
Instant Cold Packs	4%			79.40	79.40	79.40	79.40
YMCA	4%			540.00	540.00		
Personal Trainer	4%			480.00	480.00	480.00	
Home Helper/Lawn Assistance	4%		M	8,504.00	8,504.00	8,504.00	8,504.00
Lawn & Garden Maintenance	4%						
Home Mods	4%						
Lost Future Earnings							
Pain and Suffering							
Past Unreimbursable Expenses							

Appendix A: Items of Compensation for Christine Mainella

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 11	Compensation Years 12-14	Compensation Years 15-24	Compensation Years 25-Life
				2022	2023-2025	2026-2035	2036-Life
Annual Totals				20,789.55	20,701.76	20,161.76	19,681.76

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 (\$15,175.15), lost earnings (\$356,901.07), pain and suffering (\$180,384.25), and past unreimbursable expenses (\$2,938.51): \$555,398.98.

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.

At respondent's discretion items denoted "M" may be payable in twelve monthly installments totaling the annual amount indicated.