

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-411V

Filed: May 18, 2011

CHERYL A. CASTAGNA,)	
)	
Petitioner,)	NOT TO BE PUBLISHED
)	
v.)	Damages; proffer;
)	Hepatitis B;
SECRETARY OF)	Multiple sclerosis;
HEALTH AND HUMAN SERVICES,)	6 th palsy
)	
Respondent.)	
)	

Clifford J. Shoemaker, Shoemaker and Associates, Vienna, VA, for Petitioner.
Alexis B. Babcock, U.S. Dep't of Justice, Washington, D.C. for Respondent.

DECISION AWARDING DAMAGES¹

On June 28, 1999, Petitioner Cheryl Castagna filed a petition seeking compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 *et seq.* (2006). Petitioner alleged that she suffered from “6th Palsy and Probable Multiple Sclerosis” which were caused in fact by the hepatitis B vaccinations she received on February 26, 1998, and April 7, 1998. Amended Pet. at 1. On November 13, 2009, Respondent decided not to expend further resources on contesting entitlement in this matter, and I issued a ruling on entitlement on December 8, 2009.

On May 18, 2011, Respondent filed a joint Proffer setting forth all items of compensation to which the parties proffered should be awarded to Petitioner. Based upon the record as a whole, the undersigned finds the proffer reasonable and that Petitioner is entitled to an award as stated in the Proffer. Pursuant to the Proffer, attached as Appendix A, the court awards Petitioner:

¹ The undersigned intends to post this decision on the United States Court of Federal Claims’s website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). 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, the entire ruling will be available to the public. Id.

1. **A lump sum payment of \$1,416,321.62, representing life care expenses for Year One (\$237,277.62), lost earnings (\$914,817.00), pain and suffering (\$223,495.86), and past unreimbursable expenses (\$40,731.14), in the form of a check payable to petitioner, Cheryl Castagna;**
2. **An amount sufficient to purchase the annuity contract described in section II. B. of the Proffer attached as Appendix A.**

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.

IT IS SO ORDERED.

s/ Dee Lord
Dee Lord
Special Master

B. Lost Future Earnings

The parties agree that based upon the evidence of record, Cheryl A. Castagna has suffered a past loss of earnings and will not be gainfully employed in the future. Therefore, respondent proffers that Cheryl A. Castagna 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 Cheryl A. Castagna's lost earnings is \$914,817.00. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Cheryl A. Castagna should be awarded \$223,495.86 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 Cheryl A. Castagna'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 \$40,731.14. 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 Cheryl A. Castagna 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 \$1,416,321.62, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$237,277.62), lost earnings (\$914,817.00), pain and suffering (\$223,495.86), and past unreimbursable expenses (\$40,731.14), in the form of a check payable to petitioner, Cheryl A. Castagna.

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, Cheryl A. Castagna, only so long as Cheryl A. Castagna is alive at the time a particular payment

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.

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 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, Cheryl A. Castagna, 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 Cheryl A. Castagna'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, Cheryl A. Castagna: | \$1,416,321.62 |
| B. | An amount sufficient to purchase the annuity contract described above in section II. B. | |