

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 04-1781 V

Filed: January 23, 2012

Not for Publication

REGINA FLOOD,

*

*

Petitioner,

*

*

Damages Decision Based on Proffer

v.

*

*

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

*

*

*

Respondent.

*

*

John F. McHugh, New York, NY, for petitioner.

Alexis B. Babcock, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On January 20, 2012, respondent filed a Proffer on Award of Compensation. On January 23, 2012, petitioner filed a notice accepting respondent's Proffer. Based on the record as a whole, the undersigned finds that petitioner is entitled to the award as stated in the Proffer. Pursuant to the terms in the attached Proffer, the court awards petitioner:

¹ Because this decision contains a reasoned explanation for the special master's action in this case, the special master 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, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall redact such material from public access.

- a. A lump sum payment of **\$222,620.62**, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$17,079.80) and pain and suffering (\$205,540.82). The award shall be in the form of a check made payable to petitioner in the amount of **\$222,620.62**.
- b. An amount sufficient to purchase an annuity contract, subject to the conditions described in the Proffer.

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.²

IT IS SO ORDERED.

Dated: January 23, 2012

s/ Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

_____)	
REGINA FLOOD,)	
)	
Petitioner,)	No. 04-1781V
v.)	Special Master Millman
)	
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 Jacquelyn Morris, RN, BSN, CRRN, CNLCP, to provide an estimation of Regina Flood'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 17, 2008. All items of compensation identified in the life care plan, filed on January 20, 2012, as Respondent's Exhibit F, are supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for Regina Flood, attached hereto as Tab A.¹ Respondent proffers that Regina Flood 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.

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.

B. Lost Future Earnings

The parties agree that based upon the evidence of record, Regina Flood will more likely than not be employed in the future. Therefore, respondent proffers that Regina Flood should not be awarded lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Regina Flood should be awarded \$205,540.82 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

Petitioner has not made a claim for past unreimbursable expenses related to her injury.

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 Regina Flood 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 \$222,620.62, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$17,079.80) and pain and suffering (\$205,540.82), in the form of a check payable to petitioner, Regina Flood.

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, Regina Flood, only so long as Regina Flood 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.

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.

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, Regina Flood, 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 Regina Flood'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, Regina Flood: | \$222,620.62 |
| B. | An amount sufficient to purchase the annuity contract described above in section II. B. | |

Respectfully submitted,

TONY WEST
Assistant Attorney General

MARK W. ROGERS
Acting Director
Torts Branch, Civil Division

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Dated: January 20, 2012

Appendix A: Items of Compensation for Regina Flood

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Appendix A: Items of Compensation for Regina Flood

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ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Year 3	Compensation Year 4	Compensation Year 5	Compensation Year 6	Compensation Years 7-8	Compensation Year 9
				2012	2013	2014	2015	2016	2017	2018-2019	2020
Methocarbamol	5%	*		40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Gabapentin	5%	*		40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Diazepam	5%	*		40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Prednisone	5%	*		40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Hydrocodone	5%	*		40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Avonex	5%	*						300.00	300.00	300.00	300.00
PT Eval	4%	*		15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
PT	4%	*						180.00			
Mileage: PT	4%							9.12			
OT Eval	4%			218.00							
Cane	4%						66.00				
Cane Tips	4%							3.99	2.00	2.00	2.00
Walker w/ Seat & Basket	4%	*									
Power Scooter	4%	*									
Scooter Lift	4%	*									
Scooter Maint	4%	*									
Manual WC	4%	*									
Shower Chair	4%	*									
Bedside Commode	4%	*									
Adaptive Devices for Independence	4%						300.00	100.00	100.00	100.00	100.00
Patient Lift	4%	*									
Personal Emergency Response System & Install Fee	4%								518.00	468.00	468.00
House Cleaning	4%		M								
Personal Care Attendant	4%	*									
Home Mods: 3 Stair Glides	4%										6,994.00
Stair Glide Maint	4%										
Transportation Support	4%		M	14,430.00	14,430.00	14,430.00	14,430.00	14,430.00	14,430.00	14,430.00	14,430.00
Pain and Suffering				205,540.82							

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ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Year 3	Compensation Year 4	Compensation Year 5	Compensation Year 6	Compensation Years 7-8	Compensation Year 9
				2012	2013	2014	2015	2016	2017	2018-2019	2020
Annual Totals				222,620.62	16,426.80	16,291.80	16,944.70	17,655.80	17,732.69	17,282.69	24,276.69

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 (\$17,079.80) and pain and suffering (\$205,540.82): \$222,620.62.

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 with an "M" payable in twelve monthly installments totaling the annual amount indicated.

Appendix A: Items of Compensation for Regina Flood

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Appendix A: Items of Compensation for Regina Flood

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ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 10	Compensation Year 11	Compensation Year 12	Compensation Year 13	Compensation Year 14	Compensation Year 15	Compensation Year 16	Compensation Years 17-19
				2021	2022	2023	2024	2025	2026	2027	2028-2030
Annual Totals				18,121.81	17,800.69	17,282.69	2,852.69	3,289.59	10,455.81	7,565.09	7,265.09

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 (\$17,079.80) and pain and suffering (\$205,540.82): \$222,620.62.

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 with an "M" payable in twelve monthly installments totaling the annual amount indicated.

Appendix A: Items of Compensation for Regina Flood

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ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 20	Compensation Year 21	Compensation Years 22-23	Compensation Year 24	Compensation Year 25	Compensation Years 26-28	Compensation Year 29	Compensation Years 30-Life
				2031	2032	2033-2034	2035	2036	2037-2039	2040	2041-Life
HHC Aide Deductible	5%			250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00
DME Deductible	5%			100.00	100.00	100.00	100.00				
PICA Rx Deductible	5%			100.00	100.00	100.00	100.00				
Medicare Part B Deductible	5%							162.00	162.00	162.00	162.00
GHI CBP Senior Care Suppl Deductible	5%							50.00	50.00	50.00	50.00
GHI CBP Senior Care Suppl Nursing Deductible	5%							25.00	25.00	25.00	25.00
GHI CBP BCBS Rider	5%		M					1,357.80	1,357.80	1,357.80	1,357.80
Medicare Part D	5%		M					5,832.08	5,832.08	5,832.08	5,832.08
Primary Care	5%	*		45.00	45.00	45.00	45.00				
Mileage: Primary Care	4%			17.67	17.67	17.67	17.67	17.67	17.67	17.67	17.67
Neurology	5%	*		40.00	40.00	40.00	40.00				
Mileage: Neurology	4%			6.84	6.84	6.84	6.84	6.84	6.84	6.84	6.84
Pain Mngt	5%	*		20.00	20.00	20.00	20.00				
Mileage: Pain Mngt	4%			9.69	9.69	9.69	9.69	9.69	9.69	9.69	9.69
Podiatry	5%	*		80.00	80.00	80.00	80.00				
Mileage: Podiatry	4%			6.08	6.08	6.08	6.08	6.08	6.08	6.08	6.08
Psychological Counseling	4%	*					270.00				
Family Counseling	4%	*									
Psychiatry	5%	*									
Inpatient Admissions Deductible	5%	*			300.00	60.00	60.00	60.00	60.00	60.00	60.00
Lab Work	5%	*		180.00	180.00	180.00	180.00				
Mileage: Labs	4%			6.84	6.84	6.84	6.84	6.84	6.84	6.84	6.84
MRI	5%	*		15.00	15.00	15.00	15.00				
Mileage: MRI	4%			0.57	0.57	0.57	0.57	0.57	0.57	0.57	0.57
EMG	5%	*					15.00				
Mileage: EMG	4%						1.90			1.90	
Care Mngt	4%			1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00
Adt'l Care Mngt	4%			550.00	110.00	110.00	110.00	110.00	110.00	110.00	110.00
Oxycodone	5%	*		40.00	40.00	40.00	40.00				

Appendix A: Items of Compensation for Regina Flood

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ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 20	Compensation Year 21	Compensation Years 22-23	Compensation Year 24	Compensation Year 25	Compensation Years 26-28	Compensation Year 29	Compensation Years 30-Life
				2031	2032	2033-2034	2035	2036	2037-2039	2040	2041-Life
Annual Totals				8,004.21	7,893.09	7,435.09	7,721.99	13,983.92	13,893.92	13,895.82	13,893.92

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 (\$17,079.80) and pain and suffering (\$205,540.82): \$222,620.62.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

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Items denoted with an asterisk (*) covered by health insurance and/or Medicare.

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