

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-308 V

Filed: September 12, 2011

Not for Publication

NICOLE HAMELIN,

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Petitioner,

*

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v.

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Damages Decision Based on Proffer

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SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

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*

Respondent.

*

Clifford J. Shoemaker, Vienna, VA, for petitioner.

Chrysovalantis P. Kefalas, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On September 9, 2011, respondent filed a Proffer on Award of Compensation. On September 12, 2011, petitioner's counsel communicated to the undersigned's law clerk that petitioner accepts 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 stated in the attached Proffer, the court awards petitioner:

- a. A lump sum payment of **\$1,859,457.27**, representing compensation for life care expenses for Year One (\$178,031.25), lost past and future earnings (\$1,414,514.00),

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.

pain and suffering (\$228,936.00), and past unreimbursable expenses (\$37,976.02).
The award should be in the form of a check payable to petitioner.

- 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: September 12, 2011

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.

C. Pain and Suffering

Respondent proffers that Nicole Hamelin should be awarded \$228,936.00 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 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 \$37,976.02. Petitioner agrees.

E. Medicaid Lien

To the best of respondent's knowledge and upon on the representation of petitioner, petitioner has never received Medicaid benefits. Accordingly, there is no Medicaid lien.

F. Attorneys' Fees and Costs

This proffer does not address final attorneys' fees and costs. Petitioner is entitled to reasonable final attorneys' fees and costs, to be determined at a later date upon petitioner filing substantiating documentation.

II. Form of the Award

The parties recommend that the compensation provided to Nicole Hamelin 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 for all compensation available under 42 U.S.C. §300aa-15(a):

A. A lump sum payment of \$1,859,457.27 (representing compensation for life care expenses for Year One (\$178,031.25), lost past and future earnings (\$1,414,514.00), pain and suffering (\$228,936.00), and past unreimbursable expenses (\$37,976.02), in the form of a check payable to petitioner;

B. An amount sufficient to purchase an annuity contract¹, 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 company from which the annuity will be purchased.² 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 Nicole Hamelin, only so long as Ms. Hamelin is alive at the time a particular payment is due. All compensation will be paid in U.S. Dollars. 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.

The obligation to make each periodic payment described herein shall be discharged upon the mailing of a valid check in the amount of such payment to the address designated by petitioner. Delivery of payments to an address outside of the United States cannot be guaranteed. If payment is made by electronic funds transfer, discharge will occur upon the electronic transferring of funds into a valid U.S. bank account. If petitioner notifies the life insurance company that any check or electronic funds transfer was not received by the due date,

¹ To 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.

² 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.

the life insurance company shall initiate a stop payment action and, upon confirmation that such check was not previously negotiated or electronic funds transfer deposited, shall process a replacement payment.

Petitioner may be required to submit to the administrative offices of the life insurance company an affidavit, annually or on demand, testifying to the fact that petitioner is living. This affidavit, which must be notarized, will be mailed along with a copy of government issued identification to the mailing address of the life insurance company. If documentation is not received within sixty days, annuity payments may be suspended until proof that the petitioner is still living has been delivered.

1. Growth Rate

Respondent proffers that a four percent (4%) growth rate should be applied to all life care items. Thus, the benefits illustrated in the chart at Tab A that are to be paid through annuity payments should grow at four percent (4%) compounded annually from the date of judgment for all life care items. Petitioner agrees.

2. Life-contingent annuity

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as petitioner is alive at the time that a particular payment is due. Petitioner's estate shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Ms. Hamelin's death.

3. Guardianship Issues

Petitioner is a legally competent adult, and aforementioned payments will be made directly to petitioner.

III. Summary of Recommended Payments Following Judgment

- | | | |
|----|---|-----------------------|
| A. | Lump sum paid to petitioner: | \$1,859,457.27 |
| B. | Reasonable final attorneys' fees and costs: | TBD |

- C. An amount sufficient to purchase the annuity contract described
above in section II. B.

Respectfully submitted,

TONY WEST
Assistant Attorney General

TIMOTHY P. GARREN
Director
Torts Branch, Civil Division

MARK W. ROGERS
Deputy Director
Torts Branch, Civil Division

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Torts Branch, Civil Division

s/ Chrysovalantis P. Kefalas
CHRYSOVALANTIS KEFALAS
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DATED: September 9, 2011



**ITEMS OF COMPENSATION FOR
NICOLE HAMELIN, D.O.B. 02/19/1965
CL. CT. #99-308V**

U.S. DOLLARS

		GROWTH	PAID IN CASH					
NO.	ITEM	RATE	2011	2012	2013	2014	2015	2016
1	PODIATRY	4%	214.70	214.70	214.70	214.70	214.70	214.70
2	PHYSIOTHERAPY	4%	1,472.26	1,472.26	1,472.26	1,472.26	1,472.26	1,472.26
3	MASSAGE THERAPY	4%	1,226.88	1,226.88	1,226.88	1,226.88	1,226.88	1,226.88
4	DIETICIAN	4%	76.68	76.68	76.68	76.68	76.68	76.68
5	COMPUTER - USER INTERACTIVE DEVICE (in inventory)	4%	651.95	651.95	651.95	651.95	651.95	651.95
6	MOTORIZED WHEEL CHAIR (with power tilt / custom optic fiber chin control / custom seating device)	4%	14,748.12	2,949.62	2,949.62	2,949.62	2,949.62	2,949.62
7	WHEELCHAIR BATTERY AND MAINTENANCE	4%	408.96	408.96	408.96	408.96	408.96	408.96
8	ADAPTIVE TRANSIT PASS	4%	420.21	420.21	420.21	420.21	420.21	420.21
9	PHYSCHOLOGY	4%	0.00	511.20	511.20	511.20	511.20	511.20
10	CASE MANAGEMENT	4%	7,361.28	2,453.76	2,453.76	2,453.76	2,453.76	2,453.76
11	PERSONAL ATTENDANT (12 hrs/day)	4%	83,345.15	83,345.15	83,345.15	83,345.15	83,345.15	83,345.15
12	PERSONAL ATTENDANT - HOLIDAYS (12 hrs/day)	4%	3,441.40	3,441.40	3,441.40	3,441.40	3,441.40	3,441.40
13	LONG TERM CARE - HOUSING	4%	20,007.96	20,007.96	20,007.96	20,007.96	20,007.96	20,007.96
14	RENTAL OF AIR CONDITIONER	4%	306.72	306.72	306.72	306.72	306.72	306.72
15	ROTATING HOSPITAL BED	4%	39,873.60	1,594.94	1,594.94	1,594.94	1,594.94	1,594.94
16	MAINTENANCE CONTRACT	4%	0.00	613.44	613.44	613.44	613.44	613.44
17	ENVIRONMENTAL CONTROL UNIT	4%	4,475.38	447.54	447.54	447.54	447.54	447.54

	SUBTOTAL - 1ST YEAR EXPENSES		178,031.25					
18	PAST UNREIMBURSED EXPENSES		37,976.02					
19	PAIN & SUFFERING		228,936.00					
20	LOST WAGES		1,414,514.00					
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	TOTALS:		1,859,457.27	120,143.37	120,143.37	120,143.37	120,143.37	120,143.37

**Canadian \$s in life care plan were converted to U.S. \$s using the exchange rate published in Wall Street Journal (wsj.com), close of business 08-30-2011 (1 CAD = 1.0224 U.S.).



**ITEMS OF COMPENSATION FOR
NICOLE HAMELIN, D.O.B. 02/19/1965
CL. CT. #99-308V**

U.S. DOLLARS

		GROWTH	2017					2030		2065
NO.	ITEM	RATE	2026	2027	2028	2029	2030	2063	2064	LIFE
1	PODIATRY	4%	214.70	214.70	214.70	214.70	214.70	214.70	214.70	214.70
2	PHYSIOTHERAPY	4%	1,472.26	1,472.26	1,472.26	1,472.26	1,472.26	1,472.26	1,472.26	1,472.26
3	MASSAGE THERAPY	4%	1,226.88	1,226.88	1,226.88	1,226.88	1,226.88	1,226.88	1,226.88	1,226.88
4	DIETICIAN	4%	76.68	76.68	76.68	76.68	76.68	76.68	76.68	76.68
5	COMPUTER - USER INTERACTIVE DEVICE (in inventory)	4%	651.95	651.95	651.95	651.95	651.95	651.95	651.95	651.95
6	MOTORIZED WHEEL CHAIR (with power tilt / custom optic fiber chin control / custom seating device)	4%	2,949.62	2,949.62	2,949.62	2,949.62	2,949.62	2,949.62	2,949.62	2,949.62
7	WHEELCHAIR BATTERY AND MAINTENANCE	4%	408.96	408.96	408.96	408.96	408.96	408.96	408.96	408.96
8	ADAPTIVE TRANSIT PASS	4%	420.21	420.21	420.21	420.21	420.21	420.21	420.21	420.21
9	PHYSCHOLOGY	4%	511.20	511.20	511.20	511.20	511.20	511.20	511.20	511.20
10	CASE MANAGEMENT	4%	2,453.76	2,453.76	2,453.76	2,453.76	2,453.76	2,453.76	2,453.76	2,453.76
11	PERSONAL ATTENDANT (12 hrs/day)	4%	83,345.15	83,345.15	83,345.15	83,345.15	83,345.15	83,345.15	83,345.15	83,345.15
12	PERSONAL ATTENDANT - HOLIDAYS (12 hrs/day)	4%	3,441.40	3,441.40	3,441.40	3,441.40	3,441.40	3,441.40	3,441.40	3,441.40
13	LONG TERM CARE - HOUSING	4%	20,007.96	20,007.96	20,007.96	20,007.96	20,007.96	20,007.96	20,007.96	20,007.96
14	RENTAL OF AIR CONDITIONER	4%	306.72	306.72	306.72	306.72	306.72	306.72	306.72	306.72
15	ROTATING HOSPITAL BED	4%	1,594.94	1,594.94	1,594.94	1,594.94	1,594.94	1,594.94	1,594.94	1,594.94
16	MAINTENANCE CONTRACT	4%	613.44	613.44	613.44	613.44	613.44	613.44	613.44	613.44
17	ENVIRONMENTAL CONTROL UNIT	4%	447.54	447.54	447.54	447.54	447.54	447.54	447.54	447.54
	SUBTOTAL - 1ST YEAR EXPENSES									
18	PAST UNREIMBURSED EXPENSES									
19	PAIN & SUFFERING									
20	LOST WAGES									
			-----	-----	-----	-----	-----	-----	-----	-----
	TOTALS:		120,143.37	120,143.37	120,143.37	120,143.37	120,143.37	120,143.37	120,143.37	120,143.37

**Canadian \$\$ in life care plan were converted to U.S. \$\$s using the exchange rate published in Wall Street Journal (wsj.com), close of business 08-30-2011 (1 CAD = 1.0224 U.S.).