

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

Doe 93,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. RedactedV
Special Master Christian J. Moran

Filed: November 16, 2011

Damages; decision based on proffer;
influenza vaccine; transverse
myelitis.

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioner;
Glenn A. MacLeod, U.S. Department of Justice, Washington, DC, for Respondent.

PUBLISHED DECISION AWARDING DAMAGES*

On June 28, 2007, Ms. Doe filed a petition seeking compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-1 et seq., alleging that the influenza vaccination caused her to develop transverse myelitis. On May 9, 2011, it was determined that Ms. Doe is entitled to compensation under the Vaccine Act.

On November 15, 2011, respondent filed a Proffer on Award of Compensation, which petitioner agrees to. Based upon the record as a whole, the special master finds the proffer reasonable and that petitioner is entitled to an award as stated in the Proffer. Pursuant to the attached Proffer, with Tab A, the court awards petitioner:

* Because this published decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it 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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and to move to delete such information before 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 delete such material from public access.

1. A lump sum payment of \$485,429.09 representing compensation for life care expenses expected to be incurred during the first year after judgment (\$164,629.32), lost earnings (\$46,554.72), pain and suffering (\$234,218.70), and past unreimbursable expenses (\$40,026.35), in the form of a check payable to petitioner, Ms. Doe; and
2. An amount sufficient to purchase an annuity contract, subject to the conditions described in the attached Proffer (attached as Appendix A), 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 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, which annuity shall make payments directly to petitioner, Ms. Doe, only so long as Ms. Doe 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.

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. **The Clerk's Office is instructed to provide a copy of this decision to the presiding judge.** Vaccine Rule 28.1(a).

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

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

Jane Doe 93,)	
)	
Petitioner,)	
v.)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	

(ECF)
Special Master Moran

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

The respondent engaged life care planner Suzanne Labansky, MSN, CRRN, CCM, CLCP, MSC, and petitioner engaged Maureen Clancy, RN, BSN, CLCP, to jointly provide an estimation of Jane Doe 93's future vaccine-injury related needs.¹ For the purposes of this proffer, the term "vaccine related" is as described in the special master's Ruling on Entitlement filed May 9, 2011. All items of compensation identified in the parties' joint life care plan, are supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for Jane Doe 93, attached hereto as Tab A.² Respondent proffers that Jane Doe 93

¹ The parties have no objection to the proffered award of damages. Assuming the special master issues a damages decision in conformity with this proffer, the parties waive their right to seek review of such damages decision, recognizing that respondent reserves her right, pursuant to 42 U.S.C. § 300aa-12(f), to seek review of the May 9, 2011, decision finding petitioner entitled to an award under the Vaccine Act. This right accrues following entry of judgment.

² 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.

should be awarded all items of compensation set forth in the joint life care plan and illustrated by the chart attached at Tab A. Petitioner agrees.

B. Lost Earnings

The parties agree that based upon the evidence of record, Jane Doe 93 has suffered a past loss of earnings. Therefore, respondent proffers that Jane Doe 93 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 Jane Doe 93's lost earnings is \$46,554.72. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Jane Doe 93 should be awarded \$234,218.70 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 Jane Doe 93'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 \$40,026.35. 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 Jane Doe 93 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 \$485,429.09, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$164,629.32), lost earnings (\$46,554.72), pain and suffering (\$234,218.70), and past unreimbursable expenses (\$40,026.35), in the form of a check payable to petitioner, Jane Doe 93.

B. An amount sufficient to purchase an annuity contract,³ 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 company⁴ from which the annuity will be purchased.⁵ 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,

³ In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

⁴ 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.

⁵ 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.

Jane Doe 93, only so long as Jane Doe 93 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 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, Jane Doe 93, 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 Jane Doe 93'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, Jane Doe 93: **\$ 485,429.09**
- 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

VINCENT J. MATANOSKI
Acting Deputy Director
Torts Branch, Civil Division

ALTHEA WALKER DAVIS
Senior Trial Counsel
Torts Branch, Civil Division

/S/GLENN A. MACLEOD
GLENN A. MACLEOD
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Telephone: (202) 616-4122

Dated: November 15, 2011

Jane Doe 93 v. Sec'y of HHS, Fed. Cl. No. 07-448V

RESPONDENT'S PROFFER
ON AWARD OF COMPENSATION

TAB A

(Appendix A: Items of Compensation for Jane Doe 93)

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1 2011	Compensation Year 2 2012	Compensation Year 3 2013	Compensation Year 4 2014	Compensation Years 5-6 2015-2016	Compensation Year 7 2017	Compensation Years 8-9 2018-2019	Compensation Year 10 2020
Elevated Toilet Seat	4%			114.99	16.43	16.43	16.43	16.43	16.43	16.43	16.43
Electric Bed	4%	*									
Trapeze Bar & Base	4%	*									
ECU	4%			3,873.75	387.38	387.38	387.38	387.38	387.38	387.38	387.38
ECU Install/ Maint/ Battery	4%			1,650.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00
Bedpan	4%			49.95	9.99	9.99	9.99	9.99	9.99	9.99	9.99
Uplift Seat	4%			989.05							
Adaptive Equip	4%			300.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Computer Equip	4%			147.00	29.40	29.40	29.40	29.40	29.40	29.40	29.40
Catheter Supplies	4%	*									
Wipes	4%		M	159.41	159.41	159.41	159.41	159.41	159.41	159.41	159.41
Disposable Gloves	4%		M	58.68	58.68	58.68	58.68	58.68	58.68	58.68	58.68
Hand Sanitizer	4%		M	47.88	47.88	47.88	47.88	47.88	47.88	47.88	47.88
Depends	4%		M	2,004.68	2,004.68	2,004.68	2,004.68	2,004.68	2,004.68	2,004.68	2,004.68
Under Pads	4%		M	562.10	562.10	562.10	562.10	562.10	562.10	562.10	562.10
Skin Moisture Barrier	4%		M	413.40	413.40	413.40	413.40	413.40	413.40	413.40	413.40
Other Supplies	4%			100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
U of TN Pool	4%			100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Home Health Aide	4%		M	33,580.00	33,580.00	33,580.00	33,580.00	33,580.00	67,160.00	67,160.00	67,160.00
Drivers Eval	4%				861.00				861.00		
Modified Van	4%			46,235.00							
Home Mods	4%			68,202.21							
Lost Earnings				46,554.72							
Pain and Suffering				234,218.70							
Past Unreimbursable Expenses				40,026.35							
Annual Totals				485,429.09	43,180.80	42,319.80	43,141.70	43,087.10	85,985.24	77,924.47	78,149.47

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 (\$164,629.32), lost earnings (\$46,554.72), pain and suffering (\$234,218.70), and past unreimbursable expenses (\$40,026.35): \$485,429.09.
 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.

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 11 2021	Compensation Year 12 2022	Compensation Years 13-17 2023-2027	Compensation Years 18-Life 2028-Life
Medicare Part B Deductible	5%			162.00	162.00	162.00	162.00
Medigap	5%	M		1,251.84	1,251.84	1,251.84	1,251.84
Medicare Part D	5%			1,149.97	1,149.97	1,149.97	1,149.97
PCP	5%	*					
Neurologist	5%	*					
Future Specialist	5%	*					
PT/INR	5%	*					
Urinalysis	5%	*					
Urine C&S	5%	*					
Scans	5%	*					
Coumadin	5%	*					
Neurontin	5%	*					
Antibiotics for UTI	5%	*					
Lyrica	5%	*					
Tylenol	4%			16.47	16.47	16.47	16.47
Stool Softeners	4%			171.88	171.88	171.88	171.88
PT	4%	*		370.00	370.00	370.00	370.00
OT	4%	*		370.00	370.00	370.00	370.00
Massage Therapy	4%		M	1,300.00	1,300.00	1,300.00	1,300.00
Counseling	4%	*					
Nutritionist	4%	*					
Foot Drop Splint	4%			27.30	27.30	27.30	27.30
Power WC	4%	*		1,214.29	1,214.29	1,214.29	1,214.29
WC Carrying Pack	4%			5.60	5.60	5.60	5.60
WC Battery	4%			175.00	175.00	175.00	175.00
WC Maint	4%			107.14	107.14	107.14	107.14
Jay Cushion	4%			81.80	81.80	81.80	81.80
Jay Cushion Cover	4%			36.00	36.00	36.00	36.00
Portable Ramp	4%			15.00	15.00	15.00	15.00
Transfer Board	4%	*					
Over the Bed Table	4%			42.40	42.40	42.40	42.40
Manual WC	4%			35.57	35.57	35.57	35.57
Shower Commode Chair	4%			107.86	107.86	107.86	107.86

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 11 2021	Compensation Year 12 2022	Compensation Years 13-17 2023-2027	Compensation Years 18-Life 2028-Life
Elevated Toilet Seat	4%			16.43	16.43	16.43	16.43
Electric Bed	4%	*					
Trapeze Bar & Base	4%	*					
ECU	4%			387.38	387.38	387.38	387.38
ECU Install/ Maint/ Battery	4%			150.00	150.00	150.00	150.00
Bedpan	4%			9.99	9.99	9.99	9.99
Uplift Seat	4%						
Adaptive Equip	4%			100.00	100.00	100.00	100.00
Computer Equip	4%			29.40	29.40	29.40	29.40
Catheter Supplies	4%	*					
Wipes	4%		M	159.41	159.41	159.41	159.41
Disposable Gloves	4%		M	58.68	58.68	58.68	58.68
Hand Sanitizer	4%		M	47.88	47.88	47.88	47.88
Depends	4%		M	2,004.68	2,004.68	2,004.68	2,004.68
Under Pads	4%		M	562.10	562.10	562.10	562.10
Skin Moisture Barrier	4%		M	413.40	413.40	413.40	413.40
Other Supplies	4%			100.00	100.00	100.00	100.00
U of TN Pool	4%			100.00	100.00	100.00	100.00
Home Health Aide	4%		M	67,160.00	67,160.00	100,740.00	201,480.00
Drivers Eval	4%			861.00			
Modified Van	4%			36,988.00			
Home Mods	4%						
Lost Earnings							
Pain and Suffering							
Past Unreimbursable Expenses							
Annual Totals				114,927.47	78,800.47	111,519.47	212,259.47

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 (\$164,629.32), lost earnings (\$46,554.72), pain and suffering (\$234,218.70), and past unreimbursable expenses (\$40,026.35): \$485,429.09.

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.