

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

LUCY GARCIA,

*

Petitioner

*

No. 07-286V

*

Special Master Christian J. Moran

*

v.

*

Filed: January 7, 2011

*

SECRETARY OF HEALTH AND
HUMAN SERVICES

*

damages; decision based on proffer;

*

acute disseminated -

*

Respondent.

*

encephalomyelitis; measles-mumps-
rubella vaccine

John F. McHugh, Esq., Law Office of John McHugh, New York, NY, for Petitioner;
Alexis B. Babcock, Esq., U.S. Department of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION AWARDING DAMAGES*

On May 7, 2007, Lucy Garcia filed a petition seeking compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-1 et seq., alleging that she suffered acute disseminated encephalomyelitis (“ADEM”) as a result of a measles-mumps-rubella (“MMR”) vaccine administered on March 1, 2006. Respondent conceded entitlement in this case. Resp’t Rept., filed Dec. 13, 2007, at 1.

On January 3, 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

* 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.

reasonable and that petitioner is entitled to an award as stated in the Proffer. Pursuant to the attached Proffer, Appendix A, the court awards petitioner:

1. **A lump sum payment of \$406,869.83, representing lost wages (\$230,000.00), and pain and suffering (\$176,869.83), in the form of a check payable to petitioner, Lucy Garcia.**
2. **A lump sum payment of \$3,301.53, representing compensation for the reimbursement of the New York State Department of Health Medicaid lien, payable jointly to petitioner, Lucy Garcia, and**

**New York State Department of Health
Office of Insurance Programs
Division of Systems – Data Warehouse
800 N. Pearl Street
3rd Floor, Room 322
Albany, NY 12204
Attn: Mr. Bruce Lombardo**

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.

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

IT IS SO ORDERED.

Christian J. Moran
Special Master

Extra

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

RECEIVED & FILED

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OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

LUCY GARCIA,)
))
Petitioner,)
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v.)
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SECRETARY OF HEALTH AND)
HUMAN SERVICES,)
))
Respondent.)
_____)

No. 07-286V
Special Master Moran

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Lost Earnings

The parties agree that based upon the evidence of record, Lucy Garcia is more likely than not to incur future lost wages of \$230,000.00. Therefore, respondent proffers that Lucy Garcia should be awarded lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(B). Petitioner agrees.

B. Pain and Suffering

Respondent proffers that Lucy Garcia should be awarded \$176,869.83 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.

C. Past Un-reimbursable Expenses

Petitioner represents that she has incurred no past un-reimbursable expenses.

D. Medicaid Lien

Respondent proffers that Lucy Garcia is entitled to reimbursement for a New York State Department of Health Medicaid lien filed against her in the amount of \$3,301.53. Petitioner agrees.

II. Form of the Award

The parties recommend that the compensation provided to Lucy Garcia should be made through a lump sum payment 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 \$406,869.83, representing lost wages (\$230,000.00), and pain and suffering (\$176,869.83), in the form of a check payable to petitioner, Lucy Garcia.
- B. A lump sum payment of \$3,301.53, representing compensation for the reimbursement of the New York State Department of Health Medicaid lien, payable jointly to petitioner, Lucy Garcia, and

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Petitioner agrees to endorse this payment to the New York State Department of Health.

III. Summary of Recommended Payment Following Judgment

- | | | |
|----|---|----------------------|
| A. | Lump sum paid to petitioner, for lost wages and pain and suffering: | \$ 406,869.83 |
| V. | Lump sum paid jointly to petitioner and the New York State Department of Health, as reimbursement of the state's Medicaid lien: | \$ 3,301.53 |

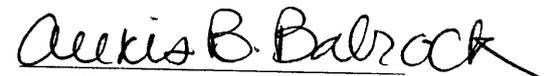
Respectfully submitted,

TONY WEST
Assistant Attorney General

TIMOTHY P. GARREN
Director
Torts Branch, Civil Division

MARK W. ROGERS
Deputy Director
Torts Branch, Civil Division


LINDA S. RENZI
Senior Trial Counsel
Torts Branch, Civil Division


ALEXIS B. BABCOCK
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) 616-7678

Dated: 1/3/11

CERTIFICATE OF SERVICE

I certify that on this 3rd day of January, 2011, a true and correct copy of the foregoing RESPONDENT'S PROFFER ON AWARD OF COMPENSATION was served by first-class mail, postage prepaid upon:

John F. McHugh, P.C.
6 Water Street
New York, NY 10004
(212) 483-0875

Chaz'Chaz' Jackson