

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

**OFFICE OF SPECIAL MASTERS**

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ALLISON HAGER,

\*

No. 01-307V

\*

Judge Nancy B. Firestone

Petitioner,

\*

Special Master Christian J. Moran

\*

v.

\*

Filed: April 7, 2011

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

\*

\*

Damages; decision based on proffer;

\*

hepatitis B vaccine, autoimmune

Respondent.

\*

hepatitis

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

**UNPUBLISHED DECISION AWARDING DAMAGES<sup>1</sup>**

On May 21, 2001, Allison Hager filed a petition seeking compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-1 et seq., alleging that she suffered autoimmune hepatitis as a result of a hepatitis B vaccine, which she received in three doses between 1997 and 1998. On August 17, 2009, the United States Court of Federal Claims determined that Ms. Hager is entitled to compensation under the Vaccine Act in a case published as Rotoli v. Sec'y of Health & Human Servs., 89 Fed. Cl. 71, 98-102 (2009).

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<sup>1</sup> Because this 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.

On April 6, 2011, respondent filed a Proffer on Award of Compensation. Petitioner agreed to each item of compensation in the proffer. 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, Appendix A, the court awards petitioner:

1. **A lump sum payment of \$1,060,105.75, representing life care expenses for Year One (\$26,220.19), lost earnings (\$810,118.03), pain and suffering (\$196,958.00), and past unreimbursable expenses (\$26,809.53), in the form of a check payable to petitioner;**
2. **A lump sum payment of \$54,632.53, representing compensation for the reimbursement of the State of Missouri Medicaid lien, payable jointly to petitioner, and**

**Missouri HealthNet Division  
Missouri Department of Social Services  
615 Howerton Court  
Jefferson City, Missouri 65109  
Attn: Ms. Rachel Nardy**

**Petitioner agrees to endorse this payment to the Missouri Department of Social Services; and**

3. **An amount sufficient to purchase the annuity contract described in the attached proffer (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. The Clerk's Office is also instructed to provide a copy of this decision to the Court.

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

IT IS SO ORDERED.

S/ Christian J. Moran

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Christian J. Moran  
Special Master



attached hereto as Tab A.<sup>2</sup> Respondent proffers that Allison Hager 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.

B. Lost Earnings

The parties agree that based upon the evidence of record, it is unlikely that petitioner will be gainfully employed in the future. Therefore, respondent proffers that Allison Hager should be awarded \$810,118.03 in lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(B). Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Allison Hager should be awarded \$196,958.00 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 \$26,809.53. Petitioner agrees.

E. Medicaid Lien

Respondent proffers that Allison Hager should be awarded funds to satisfy the State of Missouri Medicaid lien in the amount of \$54,632.53, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Missouri may have

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<sup>2</sup> 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.

against any individual as a result of any Medicaid payments the State of Missouri has made to or on behalf of Allison Hager from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about September 29, 1998, under Title XIX of the Social Security Act. Petitioner agrees.

## **II. Form of the Award**

The parties recommend that the compensation provided to Allison Hager should be made through a combination of a lump sum payment 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 \$1,060,105.75, representing life care expenses for Year One (\$26,220.19), lost earnings (\$810,118.03), pain and suffering (\$196,958.00), and past unreimbursable expenses (\$26,809.53), in the form of a check payable to petitioner;

B. A lump sum payment of \$54,632.53, representing compensation for the reimbursement of the State of Missouri Medicaid lien, payable jointly to petitioner, and

Missouri HealthNet Division  
Missouri Department of Social Services  
615 Howerton Court  
Jefferson City, Missouri 65109  
Attn: Ms. Rachel Nardy

Petitioner agrees to endorse this payment to the Missouri Department of Social Services; and

C. An amount sufficient to purchase an annuity contract, 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<sup>3</sup> 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, Allison Hager, only so long as Allison Hager 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

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<sup>3</sup> 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.

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, Allison Hager, 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 Allison Hager's death.

**III. Summary of Recommended Payments Following Judgment**

- |  |                       |
|--|-----------------------|
| A. Lump Sum paid to petitioner:  | <b>\$1,060,105.75</b> |
| B. Reimbursement for Medicaid lien:  | <b>\$ 54,632.53</b>   |
| C. An amount sufficient to purchase the annuity contract described above in section II. C. |                       |

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

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/s/ALTHEA WALKER DAVIS

Althea Walker Davis

Senior Trial Counsel

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: 06 April 2011



[illegible]

## Appendix A: Items of Compensation for Allison Hager

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Years 2-4	Compensation Year 5	Compensation Year 6	Compensation Years 7-10	Compensation Year 11	Compensation Years 12-15	Compensation Year 16
				2011	2012-2014	2015	2016	2017-2020	2021	2022-2025	2026
Basket for Scooter	4%								63.00	31.50	31.50
Batteries for Scooter	4%								184.00	184.00	184.00
Scooter Maint	4%	*									
Scooter Lift	4%								2,150.00		2,150.00
Van	4%										
Scooter Ramp	4%										
High Top Sneakers	4%	*		43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00
Grab Bars	4%					31.00	1.55	1.55	1.55	1.55	1.55
Raised Toilet Seat	4%			29.45			29.45		29.45		29.45
Wipes	4%			40.68	40.68	40.68	40.68	40.68	40.68	40.68	40.68
Gloves	4%			15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75
Case Mngt	4%			330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00
Home Health Care Giver	4%		M	13,650.00	13,650.00	13,650.00	17,290.00	17,290.00	24,570.00	24,570.00	24,570.00
Lost Earnings				810,118.03							
Pain and Sufferinig				196,958.00							
Past Unreimuibursable Expenses				26,809.53							
Medicaid Lien				54,632.53							
Annual Totals				1,114,738.28	27,884.18	27,915.18	33,163.18	33,133.73	42,840.18	40,629.23	43,816.68

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 (\$26,220.19), lost earnings (\$810,118.03), pain and suffering (\$196,958.00), and past unreimbursable expenses (\$26,809.53): \$1,060,105.75.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and the State of Missouri, as reimbursement for a Medicaid lien: \$54,632.53

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 12 monthly installments totaling the annual amount indicated.

## Appendix A: Items of Compensation for Allison Hager

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Years 17-20 2027-2030	Compensation Year 21 2031	Compensation Years 22-25 2032-2035	Compensation Years 26-Life 2036-Life
MHIP Deductible	5%						
MHIP MOP	5%						
MHIP Premium	5%		M				
MHIP Rx Deductible	5%						
Dental Procedure	5%						
Routine Dental Cleaning	5%			100.00	100.00	100.00	100.00
Medicare Part B	5%		M	1,384.80	1,384.80	1,384.80	1,384.80
Medicare Part B Deductible (Included in Medigap F)	5%	*					
Medicare Part D	5%		M	2,200.00	2,200.00	2,200.00	2,200.00
Medigap F	5%		M	1,944.00	1,944.00	1,944.00	1,944.00
Hospital Costs for EGD	5%	*					
Dr. King to read EGD	5%	*					
Hospital Costs for Colonoscopy	5%	*					
Physician Cost for Colonoscopy	5%	*					
Ultrasound of Abdomen	5%	*					
Pulmonary Function Test Screen	5%	*					
Stress Test	5%	*					
Alpha Pheta Protein Blood Test	5%	*					
Dexascan	5%	*					
CBC	5%	*					
Hospitalization	5%	*					
Proprandol	5%	*					
Imuran	5%	*	M				
Nexium	5%	*	M				
Spironolactone	5%	*	M				
Maxalt	5%	*	M				
Zofran	5%	*					
Zolpidem	5%	*					
Cipro	5%			142.31	142.31	142.31	142.31
Counseling	4%	*					
Electric Scooter	4%	*					

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Basket for Scooter	4%			31.50	31.50	31.50	31.50
Batteries for Scooter	4%			184.00	184.00	184.00	184.00
Scooter Maint	4%	*					
Scooter Lift	4%						
Van	4%				38,170.00	3,295.60	3,295.60
Scooter Ramp	4%				319.00	31.90	31.90
High Top Sneakers	4%	*		43.00	43.00	43.00	43.00
Grab Bars	4%			1.55	1.55	1.55	1.55
Raised Toilet Seat	4%			5.89	5.89	5.89	5.89
Wipes	4%			40.68	40.68	40.68	40.68
Gloves	4%			15.75	15.75	15.75	15.75
Case Mngt	4%			330.00	330.00	330.00	330.00
Home Health Care Giver	4%		M	24,570.00	24,570.00	24,570.00	33,670.00
Lost Earnings							
Pain and Sufferinig							
Past Unreimuibursable Expenses							
Medicaid Lien							
Annual Totals				30,993.48	69,482.48	34,320.98	43,420.98

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 (\$26,220.19), lost earnings (\$810,118.03), pain and suffering (\$196,958.00), and past unreimbursable expenses (\$26,809.53): \$1,060,105.75.

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