

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. [REDACTED] V

Originally Filed: November 2, 2010

Filed Redacted: November 16, 2010

Not to be Published

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JANE DOE/22,

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Petitioner,

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Damages decision based on proffer

v.

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SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

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\*

Respondent.

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

Linda S. Renzi, Washington, DC, for respondent.

**MILLMAN, Special Master**

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

On November 1, 2010, respondent filed a Proffer on Award of Compensation. On November 2, 2010, petitioner's counsel orally informed the undersigned's law clerk that respondent's Proffer was accepted. Based on the record as a whole, the special master 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:

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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 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 delete 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 delete such material from public access. This decision is being redacted because of petitioner's November 15, 2010, motion which was granted.

- a.) a lump sum payment of **\$901,829.88**, representing all elements of compensation to which petitioner is entitled. The award should be in the form of a check payable to petitioner;
- b.) a lump sum payment of **\$35,275.94**, representing compensation for the reimbursement of the Commonwealth of Massachusetts Medicaid lien. The award should in the form of a check payable jointly to petitioner and

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
MassHealth Casualty and Recovery Unit  
333 South Street  
Shrewsbury, MA 01545  
Attn: Ms. Robin Richard

- c.) an amount sufficient to purchase an annuity contract, subject to the conditions described in section II. C. of the attached proffer, 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.

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.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: November 2, 2010

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

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<sup>2</sup> 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.



B. Lost Earnings

The parties agree that based upon the evidence of record, petitioner has suffered a loss of earnings related to her vaccine injury and that it is unlikely that she will be gainfully employed in the future. Therefore, respondent proffers that [REDACTED] should be awarded \$480,937.00 in 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 [REDACTED] should be awarded \$231,103.99 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 \$17,140.18. Petitioner agrees.

E. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the Commonwealth of Massachusetts Medicaid lien in the amount of \$35,275.94, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the Commonwealth of Massachusetts may have against any individual as a result of any Medicaid payments the Commonwealth of Massachusetts has made to or on behalf of [REDACTED] [REDACTED] 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 February 28, 1995, under Title XIX of the Social Security Act.

**II. Form of the Award**

The parties recommend that the compensation provided to ██████████ 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 \$901,829.88, representing life care expenses for Year One (\$172,648.71), lost earnings (\$480,937.00), pain and suffering (\$231,103.99), and past unreimbursable expenses (\$17,140.18), in the form of a check payable to petitioner;

B. A lump sum payment of \$35,275.94, representing compensation for the reimbursement of the Commonwealth of Massachusetts Medicaid lien, payable jointly to petitioner and

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
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333 South Street  
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Att: Ms. Robin Richard

Petitioner agrees to endorse this payment to The Commonwealth of Massachusetts.

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>2</sup> from

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<sup>2</sup> The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus,  
(continued...)

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, [REDACTED], only so long as [REDACTED] 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>2</sup>(...continued)

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: A A-, 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, [REDACTED] is alive at the time that a particular payment is due. Petitioner agrees to make arrangements to ensure that written notice is provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of [REDACTED]'s death.

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

- |  |                      |
|--|----------------------|
| A. Lump Sum paid to petitioner:  | <b>\$ 901,829.88</b> |
| B. Reimbursement of Commonwealth of Massachusetts Medicaid lien:                           | <b>\$ 35,275.94</b>  |
| C. An amount sufficient to purchase the annuity contract described above in section II. C. |                      |

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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s/Linda S. Renzi  
LINDA S. RENZI  
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P.O. Box 146  
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Telephone: (202) 616-4133

Dated: November 1, 2010





Appendix A: Items of Compensation for [REDACTED]

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 Year 7	Compensation Year 8	Compensation Year 9
					2011	2012	2013	2014	2015	2016	2017	2018
WC Maint	4%	*										
WC Batteries	4%	*										
Manual WC	4%			2,000.00								
Manual WC Maint	4%			90.00	90.00	90.00	90.00	90.00	90.00	90.00	90.00	90.00
Jay 2 Cushion: Manual WC	4%			308.00	308.00			308.00		308.00		308.00
WC Pouch	4%			32.95	32.95			32.95		32.95		32.95
Gloves	4%			102.20	102.20			102.20		102.20		102.20
Portable Ramp	4%			243.10								
Case Management	4%		M	2,280.00	1,140.00	1,140.00	1,140.00	1,140.00	1,140.00	1,140.00	1,140.00	1,140.00
Psychological Counseling	4%	*										
Home Mods	0%			35,000.00								
Modified Van	4%			56,665.72								
Life Alert Install	0%			115.00								
Life Alert Monitoring	4%		M	348.00	348.00	348.00	348.00	348.00	348.00	348.00	348.00	348.00
Housekeeper: Deep Cleaning	4%		M	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00
Attendant Care	4%		M	54,750.00	54,750.00	54,750.00	54,750.00	73,000.00	73,000.00	73,000.00	73,000.00	73,000.00
Lost Earnings				480,937.00								
Pain and Suffering				231,103.99								
Past Unreimb. Expenses				17,140.18								
Medicaid Lien				35,275.94								
Annual Totals				937,105.82	68,826.01	69,299.15	68,875.76	87,549.15	87,604.65	87,636.25	87,076.01	87,549.15

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 (\$172,648.71), lost earnings (\$480,937.00), pain and suffering (\$231,103.99), and past unreimbursable expenses (\$17,140.18): \$901,829.88.  
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and The Commonwealth of Massachusetts, as reimbursement for a Medicaid lien: \$35,275.94.  
 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 [REDACTED]

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 Year 17	Compensation Year 18
WC Maint			2019	2020	2021	2022	2023	2024	2025	2026	2027
WC Batteries	4%	*									
Manual WC	4%	*		2,000.00							
Manual WC Maint	4%		90.00	90.00	90.00	90.00	90.00	90.00	90.00	90.00	90.00
Jay 2 Cushion: Manual WC	4%			308.00		308.00		308.00		308.00	
WC Pouch	4%			32.95		32.95		32.95		32.95	
Gloves	4%			102.20		102.20		102.20		102.20	
Portable Ramp	4%			243.10							
Case Management	4%	M	1,140.00	1,140.00	1,710.00	1,710.00	1,710.00	1,710.00	1,710.00	1,710.00	1,710.00
Psychological Counseling	4%	*									
Home Mods	0%										
Modified Van	4%			45,332.58							
Life Alert Install	0%										
Life Alert Monitoring	4%	M	348.00	348.00	348.00	348.00	348.00	348.00	348.00	348.00	348.00
Housekeeper: Deep Cleaning	4%	M	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00
Attendant Care	4%	M	91,250.00	91,250.00	91,250.00	91,250.00	91,250.00	109,500.00	109,500.00	109,500.00	109,500.00
Lost Earnings											
Pain and Suffering											
Past Unreimb. Expenses											
Medicaid Lien											
Annual Totals			105,375.76	154,174.47	105,896.01	106,456.25	105,896.01	124,619.15	128,523.40	123,715.62	123,242.48

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 (\$172,648.71), lost earnings (\$480,937.00), pain and suffering (\$231,103.99), and past unreimbursable expenses (\$17,140.18): \$901,829.88.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and The Commonwealth of Massachusetts, as reimbursement for a Medicaid lien: \$35,275.94.

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 [REDACTED]

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 19 2028	Compensation Year 20 2029	Compensation Year 21 2030	Compensation Years 22-24 2031-2033	Compensation Years 25-29 2034-2038	Compensation Years 30-34 2039-2043	Compensation Years 35-Life 2044-Life
WC Maint	4%	*								
WC Batteries	4%	*								
Manual WC	4%					2,000.00	200.00	200.00	200.00	200.00
Manual WC Maint	4%			90.00	90.00	90.00	90.00	90.00	90.00	90.00
Jay 2 Cushion: Manual WC	4%			308.00		308.00	154.00	154.00	154.00	154.00
WC Pouch	4%			32.95		32.95	16.48	16.48	16.48	16.48
Gloves	4%			102.20		102.20	51.10	51.10	51.10	51.10
Portable Ramp	4%					243.10	24.31	24.31	24.31	24.31
Case Management	4%		M	1,710.00	1,710.00	1,710.00	1,710.00	1,710.00	1,710.00	1,710.00
Psychological Counseling	4%	*								
Home Mods	0%									
Modified Van	4%					45,332.58	4,533.26	4,533.26	4,533.26	4,533.26
Life Alert Install	0%									
Life Alert Monitoring	4%		M	348.00	348.00	348.00	348.00	348.00	348.00	348.00
Housekeeper: Deep Cleaning	4%		M	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00	3,120.00
Attendant Care	4%		M	109,500.00	127,750.00	127,750.00	127,750.00	146,000.00	164,250.00	182,500.00
Lost Earnings										
Pain and Suffering										
Past Unreimb. Expenses										
Medicaid Lien										
Annual Totals				123,802.72	141,515.29	190,363.75	146,642.27	164,892.27	183,142.27	201,392.27

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 (\$172,648.71), lost earnings (\$480,937.00), pain and suffering (\$231,103.99), and past unreimbursable expenses (\$17,140.18): \$901,829.88.  
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and The Commonwealth of Massachusetts, as reimbursement for a Medicaid lien: \$35,275.94.  
 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.