

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 01-537V

Filed: March 10, 2009

Not for publication

PAUL SHIRLEY,

*

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Petitioner,

*

*

v.

*

Damages decision based on proffer

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SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

*

*

*

Respondent.

*

Ronald C. Homer, Boston, MA, for petitioner.

Lisa A. Watts, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On March 3, 2009, respondent filed a Proffer on Award of Compensation. On March 10, 2009, petitioner filed a Notice Regarding Proffer in which petitioner stated no objection to the Proffer's contents. 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 petitioner:

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 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.

a lump sum payment of **\$367,295.57**, representing the discounted present value of life care expenses expected to be incurred over Paul Shirley's life (\$94,928.99), pain and suffering (\$244,232.50), and past unreimbursable expenses (\$28,134.08) in the form of a check payable to petitioner, Paul Shirley.

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.

Date: March 10, 2009

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.

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

PAUL SHIRLEY,)	
)	
Petitioner,)	<u>ECF</u>
)	
v.)	No. 01-537V
)	Special Master Millman
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

The respondent engaged life care planner Janet Toney, MA, LPC, CRC, CDMS, CCM, CLCP, and petitioner engaged life care planner Roberta Hurley, BS Ed., to provide an estimation of Paul Shirley's future vaccine-injury related needs. All items of compensation identified as vaccine-related are supported by the evidence and are illustrated by the chart entitled Appendix A: Discounted Present Value of Life Care Items for Paul Shirley, attached hereto as Tab A.¹ Respondent proffers that Paul Shirley should be awarded the discounted present value of projected vaccine-related life care expenses as illustrated by the spreadsheet analysis attached at Tab A. Petitioner agrees.

¹The chart at Tab A illustrates the annual expenses projected for life care items, discounted over Paul Shirley's life expectancy at the net discount rates indicated.

B. Lost Earnings

The parties agree that based upon the evidence of record, Paul Shirley has suffered an impairment in his earnings capacity. However, compensation for any loss of earnings sustained has been, and is being received, from collateral sources. Therefore, respondent proffers that Paul Shirley should not be awarded 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 Paul Shirley should be awarded \$244,232.50 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 his expenditure of past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$28,134.08. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no Medicaid liens outstanding against him.

II. Form of the Award

The parties recommend that the compensation provided to Paul Shirley 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 \$367,295.57, representing the discounted present value of life care expenses expected to be incurred over Paul Shirley's life (\$94,928.99),

pain and suffering (\$244,232.50), and past unreimbursable expenses (\$28,134.08)
in the form of a check payable to petitioner, Paul Shirley.

1. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

III. Summary of Recommended Payment Following Judgment

- A. Lump sum paid to petitioner for future vaccine-related life care expenses, pain and suffering, and past unreimbursable expenses: **\$ 367,295.57**

Respectfully submitted,

MICHAEL A. HERTZ
ACTING ASSISTANT ATTORNEY GENERAL

TIMOTHY P. GARREN
DIRECTOR
Torts Branch, Civil Division

CATHARINE E. REEVES
ACTING DEPUTY DIRECTOR
Torts Branch, Civil Division

ALTHEA W. DAVIS
SENIOR TRIAL COUNSEL
Torts Branch, Civil Division

s/Lisa A. Watts
LISA A. WATTS
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Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Telephone: (202) 616-4099

Dated: March 3, 2009

Petitioner: Paul Shirley, D.O.B. 12/24/1942

LCP Present Value: \$94,928.99

Annual Amounts Follow Anniversary Dates of Judgment

and to be Discounted at the Net Discount Rates Indicated

Remaining Life Expectancy Based on US Life Table for Males 2004, Volume 56, No. 9, Dec 28, 2007: 16.4

Year	Year from Judgment	Age	Therapeutic Pool Heater/ Pool Filtration System/ Home Mods 0%	Van Maintenance 2%	Van Insurance 2%	Personal Care Assistance at Home: Lawn, etc. 2%	Computer 2%	Software 2%	Wireless Mouse 2%	Computer Table 0%	Annual Total
2009	0	67	18,322.71	1,044.00	670.00	4,299.00	1,299.00	199.99	48.00	200.00	26,082.70
2010	1	68	-	1,023.53	656.86	3,137.25	254.71	39.22	23.53	-	5,135.10
2011	2	69	-	1,003.46	643.98	3,075.74	249.71	38.45	23.07	-	5,034.41
2012	3	70	-	983.78	631.36	3,015.43	244.82	37.69	22.62	-	4,935.70
2013	4	71	-	964.49	618.98	2,956.31	240.02	36.95	22.17	-	4,838.92
2014	5	72	-	945.58	606.84	2,898.34	235.31	36.23	21.74	-	4,744.04
2015	6	73	-	927.04	594.94	2,841.51	230.69	35.52	21.31	-	4,651.01
2016	7	74	-	908.86	583.28	2,785.79	226.17	34.82	20.89	-	4,559.81
2017	8	75	-	891.04	571.84	2,731.17	221.74	34.14	20.48	-	4,470.41
2018	9	76	-	873.57	560.63	2,677.62	217.39	33.47	20.08	-	4,382.76
2019	10	77	-	856.44	549.63	2,625.11	213.13	32.81	19.69	-	4,296.81
2020	11	78	-	839.65	538.86	2,573.64	208.95	32.17	19.30	-	4,212.57
2021	12	79	-	823.19	528.29	2,523.18	204.85	31.54	18.92	-	4,129.97
2022	13	80	-	807.05	517.93	2,473.70	200.83	30.92	18.55	-	4,048.98
2023	14	81	-	791.22	507.78	2,425.20	196.90	30.32	18.19	-	3,969.61
2024	15	82	-	775.71	497.82	2,377.65	193.04	29.72	17.83	-	3,891.77
2025	15.4	83	-	307.83	197.56	943.56	76.60	11.79	7.08	-	1,544.42
Totals			18,322.71	14,766.44	9,476.58	46,360.20	4,713.86	725.75	363.45	200.00	94,928.99