

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

No. 08-29V

Filed: June 11, 2012

KARI CUPP, parent of Raegan Cupp,
a minor,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Damages Decision Based on Proffer;
MMR; Hib; Juvenile Rheumatoid
Arthritis

Ronald Homer, Esq., Boston, MA, for petitioner
Chrysovalantis Kefalas, Esq., U.S. Dept. of Justice, Washington, DC, for respondent

DECISION AWARDING DAMAGES¹

Vowell, Special Master:

On January 17, 2008, Kari Cupp filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.*² [the “Vaccine Act” or “Program”], on behalf of her minor daughter, Raegan Cupp [“Raegan”]. An amended petition, alleging that Raegan suffered rheumatologic injuries, including juvenile rheumatoid arthritis, as a result of her January 24, 2005 MMR and Hib vaccinations, was filed on May 16, 2008. Amended Petition at 1.

On June 23, 2009, an entitlement ruling was issued,³ which found petitioner was entitled to compensation. The parties subsequently filed separate life care plans and a

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

³ The ruling was issued by Special Master Abell. This case was reassigned to me on March 31, 2010.

damages hearing was scheduled. In advance of the hearing, the parties were able to resolve the differences in their plans, and on June 8, 2012, respondent filed a proffer on award of compensation detailing compensation for life care items, lost future earnings, pain and suffering, and past unreimbursable expenses. The proffer indicates that petitioner agrees with each aspect of the compensation award.

Pursuant to the terms stated in the attached Proffer, **I award petitioner:**

1. **A lump sum payment of \$316,017.51 in the form of a check payable to petitioner, as guardian/conservator of the estate of Raegan Cupp, for the benefit of Raegan Cupp**, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$25,563.51), lost future earnings (\$120,000.00), and pain and suffering (\$170,454.00). This payment shall not be made until petitioner provides respondent with documentation establishing the appointment of petitioner as the guardian/conservator of Raegan's estate;
2. **A lump sum payment of \$6,348.11 in the form of a check payable to Kari Cupp, petitioner**, representing compensation for past unreimbursable expenses;
3. An amount sufficient to purchase an annuity contract, subject to the conditions described in paragraph II.C. of the Proffer, paid to the life insurance company from which the annuity will be purchased.

These amounts represent compensation for all damages that would be available under § 300aa-15(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 in accordance with this decision.⁴

IT IS SO ORDERED.

s/Denise K. Vowell
Denise K. Vowell
Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

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

KARI CUPP, Parent of RAEGAN CUPP, a minor)	
)	
Petitioner,)	
)	
v.)	No. 08-29V
)	Special Master Vowell
)	ECF
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 M. Virginia Walton, RN, MSN, FNP, CNLCP, and petitioner engaged life care planner Maureen Clancy, RN, BSN, CLCP, to provide an estimation of Raegan Cupp’s future vaccine-injury related needs. The parties’ planners came to a joint consensus regarding appropriate items of care. All items of compensation identified in the life care plan, filed on June 8, 2012, as Respondent’s Exhibit L, are supported by the evidence, and are illustrated by the chart entitled **Items of Compensation for Raegan Cupp**, attached hereto as Tab A.¹ Respondent proffers that Raegan Cupp (“Raegan”) 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.

¹The 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.

B. Lost Future Earnings

The parties agree that based upon the evidence of record, Raegan will likely suffer lost earnings in the future as a result of her vaccine-related injury. Respondent proffers that the appropriate award for Raegan's lost future earnings is **\$120,000.00**. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Raegan should be awarded **\$170,454.00** for Raegan's 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 expenditures of past unreimbursable expenses related to Raegan's vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of **\$6,348.11**. Petitioner agrees.

E. Medicaid Lien

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

II. Form of the Award

The parties recommend that the compensation provided to petitioner 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 **\$316,017.51**, representing compensation for life care plan expenses for Year One (\$25,563.51), lost future earnings (\$120,000.00), and pain and suffering (\$170,454.00), in the form of a check payable to petitioner as guardian/conservator of Raegan Cupp's estate, for the benefit of Raegan Cupp. No payments shall be made until respondent is provided with documentation establishing the appointment of petitioner as the guardian/conservator of Raegan's estate;

B. A lump sum payment of **\$6,348.11**, representing compensation for past unreimbursable expenses, payable to Kari Cupp, petitioner;

C. An amount sufficient to purchase an annuity contract², 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 company³ 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, as guardian/conservator of Raegan Cupp's estate, for the benefit of Raegan Cupp, until Raegan reaches the age of majority, and thereafter, directly to Raegan herself. Petitioner or Raegan will continue to receive the annuity payments from the Life Insurance Company only so long as Raegan is alive at the time that 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 the guardian/conservator and do not require that the payment be made in one annual installment.

1. Growth Rate

² To satisfy the conditions set forth herein, in respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

³ 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.

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 or Raegan will continue to receive the annuity payments from the Life Insurance Company only so long as Raegan is alive at the time that a particular payment is due. Petitioner or the personal representative of Raegan Cupp's estate shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Raegan's death.

3. Guardianship

No payments shall be made until petitioner provides the Secretary with documentation establishing that she has been appointed as the guardian/conservator of Raegan Cupp's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Raegan Cupp at the time a payment is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of Raegan Cupp upon submission of written documentation of such appointment to the Secretary.

III. Summary of Recommended Payments Following Judgment

A.	Lump Sum paid to petitioner as guardian/conservator of Raegan Cupp's estate:	\$316,017.51
B.	Lump sum paid to petitioner:	\$ 6,348.11
C.	Amounts sufficient to purchase the annuity contract(s) described above in section II. C.	

Respectfully submitted,

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