

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS  
No. 08-401V  
Filed: July 22, 2010**

\*\*\*\*\*

CRISELDA HOLGUIN,	*	
	*	
Petitioner,	*	Damages Decision Based on
v.	*	Proffer; Trivalent Influenza
	*	Vaccine; Guillan-Barré Syndrome
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

\*\*\*\*\*

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

Chrysovalantis Kefalas, Esq., U.S. Dept. of Justice, Washington, DC, for respondent.

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

**Vowell**, Special Master:

On June 2, 2008 Criselda Holguin filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.*<sup>2</sup> [the “Vaccine Act” or “Program”] alleging she suffered Guillan-Barré Syndrome as a result of a trivalent influenza vaccine she received on October 16, 2007. See Amended Petition for Vaccine Compensation and Motion for a Ruling on the Record, filed December 1, 2008, at 1. After reviewing petitioner’s medical records, respondent indicated that she would “not expend further resources to contest entitlement.” Respondent’s Report, filed

---

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims’ website, in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, 116 Stat. 2899, 2913 (Dec. 17, 2002). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

<sup>2</sup> 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).

February 2, 2009, at 6. On July 9, 2010, I issued a ruling finding that petitioner was entitled to compensation under the Vaccine Act.

Petitioner filed her life care plan as Petitioner's Exhibit 25 on September 18, 2009. Respondent then filed her life care plan as Respondent's Exhibit B on February 23, 2010. On July 12, 2010, respondent filed a proffer on award of compensation detailing compensation for life care items, lost earnings, pain and suffering, past unreimbursable expenses, and Medicaid liens. On July 13, 2010, petitioner filed notice that she accepts respondent's proffer. Pursuant to the terms stated in the attached proffer, **I award petitioner:**

1. **A lump sum payment of \$746,992.24 in the form of a check payable to petitioner**, representing life care expenses for Year One (\$94,896.02), lost earnings (\$408,311.62), pain and suffering (\$221,591.39), and past unreimbursable expenses (\$22,193.21);
2. **A lump sum payment of \$7,101.41 in the form a check payable jointly to petitioner and Texas Medicaid and Healthcare Partnership, Tort Department, 12365 A Riata Trace Parkway, P.O. Box 202948, Austin, TX 76720, Attn: Mr. Colin Funke**, representing compensation for the reimbursement of the Texas Medicaid and Healthcare Partnership lien;
3. **A lump sum payment of \$268,616.89, in the form of a check payable jointly to petitioner and State of Arizona Health Management Systems, 2122 East Highland Avenue, Suite 225, P.O. Box 10530, Phoenix, AZ 85064, Attn: Ms. Danielle Walker**, representing compensation for the reimbursement of the State of Arizona Health Management Systems lien;
4. **A lump sum payment of \$67,751.58, in the form of a check payable jointly to petitioner and Texas Department of Aging and Disability Services, PBS Recovery Unit (E-400), 701 West 51st Street, P.O. Box 149081, Austin, TX 78714-9081, Attn: Ms. Gayle Sandoval**, representing compensation for the reimbursement of the Texas Department of Aging and Disability Services lien;
5. An amount sufficient to purchase an annuity contract, subject to the conditions described in paragraph II.E. of the attached 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.<sup>3</sup>

**IT IS SO ORDERED.**

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

---

<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party 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 Criselda Holguin should be awarded \$408,311.62 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 Criselda Holguin should be awarded \$221,591.39 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 \$22,193.21. Petitioner agrees.

E. Medicaid Liens

Respondent proffers that petitioner is entitled to reimbursement for three Medicaid liens filed against her totaling \$343,469.88. Petitioner agrees.

**II. Form of the Award**

The parties recommend that the compensation provided to Criselda Holguin 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 \$746,992.24, representing life care expenses for Year One (\$94,896.02), lost earnings (\$408,311.62), pain and suffering (\$221,591.39), and past unreimbursable expenses (\$22,193.21), in the form of a check payable to petitioner;

B. A lump sum payment of \$7,101.41, representing compensation for the reimbursement of the Texas Medicaid and Healthcare Partnership lien, payable jointly to petitioner and

Texas Medicaid and Healthcare Partnership  
Tort Department  
12365 A Riata Trace Parkway  
P.O. Box 202948  
Austin, TX 76720  
Att: Mr. Colin Funke

Petitioner agrees to endorse this payment to Texas Medicaid and Healthcare Partnership.

C. A lump sum payment of \$268,616.89, representing compensation for the reimbursement of the State of Arizona Health Management Systems lien, payable jointly to petitioner and

State of Arizona Health Management Systems  
2122 East Highland Avenue  
Suite 225  
P.O. Box 10530  
Phoenix, AZ 85064  
Att: Ms. Danielle Walker

Petitioner agrees to endorse this payment to State of Arizona Health Management Systems.

D. A lump sum payment of \$67,751.58, representing compensation for the reimbursement of the Texas Department of Aging and Disability Services lien, payable jointly to petitioner and

Texas Department of Aging and Disability Services  
PBS Recovery Unit (E-400)  
701 West 51<sup>st</sup> Street  
P.O. Box 149081  
Austin, TX 78714-9081  
Att: Ms. Gayle Sandoval

Petitioner agrees to endorse this payment to Texas Department of Aging and Disability Services.

E. 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 Respondent's Exhibit E attached hereto, paid to the life insurance company<sup>2</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, Criselda Holguin, only so long as Criselda Holguin 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

---

<sup>2</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.

Respondent's Exhibit E 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 Respondent's Exhibit E 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 will continue to receive the annuity payments from the Life Insurance Company only so long as she, Criselda Holguin, 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 Criselda Holguin's death.

3. Guardianship

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

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

A. Lump Sum paid to petitioner:	\$ 746,992.24
B. Reimbursement of Texas Medicaid and Healthcare Partnership lien:	\$ 7,101.41
C. Reimbursement of Arizona Health Management Systems lien:	\$ 268,616.89
D. Reimbursement of Texas Dep. of Aging and Disability Services lien:	\$ 67,751.58

E. An amount sufficient to purchase the annuity contract described above in section II. E.

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

/S Chrysovalantis P. Kefalas  
CHRYSOVALANTIS P. KEFALAS  
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) 616-9197

Dated: July 12, 2010