

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-294V

Filed: December 9, 2008

Not to be published.¹

HELEN ZALOUDEK,

Petitioner,

v.

Vaccine Act; Stipulation; Damages

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

DECISION²

This is an action seeking an award under the National Childhood Vaccine Injury Compensation Program (see 42 U.S.C. § 300aa-10 *et seq.*), on account of an injury to the petitioner. On December 8, 2008, the respondent filed a stipulation signed by both parties agreeing that a Decision should be entered awarding compensation.

I have reviewed the stipulation, and find that it describes appropriate compensation in this case pursuant to 42 U.S.C. § 300aa-15(a). I hereby order that compensation be awarded based on the stipulation. I order that respondent make a lump sum payment and purchase an annuity contract as follows:

¹This document will not be sent to electronic publishers as a formally “published” opinion. However, because this document contains a reasoned explanation for my action in this case, I intend to post this document 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). Therefore, each party has 14 days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, this entire document will be available to the public. *Id.* See also 42 U.S.C. § 300aa-12(d)(4)(B).

²In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in accordance with this Decision.

1. Lump sum

As per the parties' agreement, a lump sum payment in the amount of \$ **616,960.95** shall be payable to the petitioner. This amount represents all compensation for "pain and suffering," past unreimbursable expenses, and life care expenses for the first year.

2. Annuity

The parties agree that an annuity should be purchased for the benefit of the petitioner, on account of her future un-reimbursable residential care, medication, and medical care expenses. Under the annuity contract, the petitioner is to receive, "beginning on the first anniversary of the date of judgment, an annual amount of \$93,200.00 to be paid for the remainder of Helen Zaloudek's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment."

Accordingly, pursuant to 42 U.S.C. § 300aa-15(f)(4), I order respondent to purchase, and take ownership of, such an annuity contract from an insurance company for the benefit of Ms. Zaloudek, pursuant to which the insurance company will agree to make periodic payments to her for the rest of her life, commencing on the first anniversary of the date of judgment.³

As specified in the stipulation, the personal representative of the estate of Helen Zaloudek shall provide written notice to the respondent within twenty days of her death.

/s/George L. Hastings, Jr.

George L. Hastings, Jr.
Special Master

³ The annuity contract shall be purchased from an insurance company that meets the following criteria, adapted from the stipulation; these criteria are obviously based upon the December 1990 draft of the Uniform Periodic Payment of Judgments Act. The insurance company must:

- 1) have a minimum of \$250,000,000 of capital and surplus, exclusive of any mandatory security valuation reserve; and
- 2) 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 Investors 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.