

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-637V

Filed: January 16, 2013

Not for publication

TYRONE STEPHENS, JR., a minor by his *
parents REGINA STEPHENS and *
TYRONE STEPHENS, *

Petitioners, *

Damages decision based on proffer

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Lawrence R. Cohan, Philadelphia, PA, for petitioners.
Claudia B. Gangi, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On January 15, 2013, respondent filed a Proffer on Award of Compensation. Based on the record as a whole, the special master finds that petitioners are entitled to the award as stated in the Proffer. Pursuant to the terms stated in the attached Proffer, the court awards petitioners:

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. a lump sum payment of **\$937,915.00**, representing compensation for lost future earnings (\$606,541.00), pain and suffering (\$247,678.00), and life care expenses for Year One (\$83,696.00), in the form of a check payable to petitioners as guardians/conservators of Tyrone Stephens, Jr.'s estate;
- b. a lump sum payment of **\$11,901.00**, representing compensation for past unreimbursable expenses, payable to petitioners;
- c. a lump sum payment of **\$1,658.00**, representing compensation for satisfaction of the State of Ohio Medicaid lien, payable jointly to petitioners and

State of Ohio
Ohio Department of Job and Family Services
Ohio Tort Recovery Unit
350 Worthington Road, Suite G
Westerville, OH 43082
Attn: Jeanny Blackledge; and

- d. an amount sufficient to purchase an annuity contract subject to the conditions described in section II. D. of the attached Proffer.

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.

Dated: January 16, 2013

/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.

Stephens, Jr. should be awarded lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(B). Respondent proffers that the appropriate award for Tyrone Stephens, Jr.'s lost future earnings is \$606,541.00. Petitioners agree.

C. Pain and Suffering

Respondent proffers that Tyrone Stephens, Jr. should be awarded \$247,678.00 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). Petitioners agree.

D. Past Un-reimbursable Expenses

Evidence supplied by petitioner documents his expenditure of past un-reimbursable expenses related to Tyrone Stephens, Jr.'s vaccine-related injury. Respondent proffers that petitioners should be awarded past un-reimbursable expenses in the amount of \$11,901.00. Petitioners agree.

E. Medicaid Lien

Respondent proffers that Tyrone Stephens, Jr. should be awarded funds to satisfy the State of Ohio Medicaid lien in the amount of \$1,658.00, which represents full satisfaction of any right of subrogation, assignment, claim, lien or cause of action the State of Ohio may have against any individual as a result of any Medicaid payments the State of Ohio has made to or on behalf of Tyrone Stephens, Jr. from the date of his eligibility for benefits through the date of judgment in this case as a result of his vaccine-related injury suffered on or about February 17, 2009, under Title XIX of the Social Security Act.

F. Attorneys' Fees and Costs

This proffer does not address final attorneys' fees and costs. Petitioner is entitled to reasonable attorneys' fees and costs, to be determined at a later date upon petitioner filing substantiating documentation.

II. Form of the Award

The parties recommend that the compensation provided to Tyrone Stephens, Jr. 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 **\$937,915.00**, representing compensation for lost future earnings (\$606,541.00), pain and suffering (\$247,678.00), and life care expenses for Year One (\$83,696.00) in the form of a check payable to petitioners as the guardians/conservators of Tyrone Stephens, Jr.'s estate. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardians/conservators of Tyrone Stephens, Jr.'s estate.

B. A lump sum payment of **\$11,901.00**, representing compensation for payment for past un-reimbursable expenses, payable to petitioners.

C. A lump sum payment of **\$1,658.00**, representing compensation for satisfaction of the State of Ohio Medicaid lien, payable jointly to petitioners and

State of Ohio
Ohio Department of Job and Family Services
Ohio Tort Recovery Unit
350 Worthington Road, Suite G
Westerville, OH 43082

Attn: Jeanny Blackledge

Petitioners agree to endorse this payment to the State of Ohio.

D. An amount sufficient to purchase an annuity contract,¹ 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 company² from which the annuity will be purchased.³ 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 petitioners as guardians/conservators of the estate of Tyrone Stephens, Jr., for the benefit of Tyrone Stephens, Jr., only so long as Tyrone Stephens, Jr. 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

¹ In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

² 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.

³ Petitioners authorize the disclosure of certain documents filed by the petitioners in this case consistent with the Privacy Act and the routine uses described in the National Vaccine

describe only the total yearly sum to be paid to petitioners and do not require that the payment be made in one annual installment.

1. **Growth Rates**

Respondent proffers that a four percent (4%) growth rate should be applied to all non-medical life care items, and a six percent (6%) growth rate should be applied to all medical life care items, in accordance with the Schedule at Tab A. 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 six percent (6%) compounded annually from the date of judgment for medical items.

2. **Life-Contingent Annuity**

Petitioners will continue to receive the annuity payments from the Life Insurance Company only so long as Tyrone Stephens, Jr. is alive at the time that a particular payment is due. Written notice shall be provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Tyrone Stephens, Jr.'s death.

3. **Guardianship Issues**

No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardians/conservators of Tyrone Stephens, Jr.'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Tyrone Stephens, Jr., any such payment shall be made to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of Tyrone Stephens, Jr. upon submission of written

documentation of such appointment to the Secretary.

III. Summary of Recommended Payments Following Judgment

A.	Lump sum paid to petitioners as guardians/conservators of Tyrone Stephens, Jr.'s estate:	\$ 937,915.00
B.	Lump sum paid to petitioners:	\$ 11,901.00
C.	Reimbursement for Medicaid lien:	\$ 1,658.00
D.	Reasonable final attorneys' fees and costs:	TBD
E.	An amount sufficient to purchase the annuity contract described above in section II. D.	

Respectfully submitted,

STUART F. DELERY
Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

LINDA S. RENZI
Senior Trial Counsel
Torts Branch, Civil Division

/s/ Claudia B. Gangi
CLAUDIA B. GANGI
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel.: (202) 616-4138

Dated: January 15, 2013

Pet. Tyrone Stephens, Jr.
D.O.B. 02/14/2008

DATE: 12/04/12
TIME: 01:04 AM

SUMMARY OF LIFE CARE ITEMS - JOINT LIFE CARE PLAN dated November 20, 2012

ITEM OF CARE	Insurance	Medical Care	Ancillary Services	Medications	Supplies	Home Services	Transportation	TOTALS of Items with a 6.0% Growth Rate	TOTALS of Items with a 4.0% Growth Rate	TOTALS OF 4.0% & 6.0% ITEMS & APPLYING THE GROWTH RATE	
GROWTH RATE	6.0%	6.0%	4.0%	4.0%	4.0%	4.0%					
AGE	YEAR										
5	2013	3,500.00	1,550.00	1,233.00	417.82	12,878.06	59,580.00	0.00	5,050	74,109	79,159
6	2014	3,500.00	1,550.00	1,583.00	417.82	1,648.31	59,580.00	0.00	5,050	63,229	71,111
7	2015	3,500.00	1,550.00	1,583.00	417.82	591.88	59,580.00	0.00	5,050	62,173	72,920
8	2016	3,500.00	1,550.00	1,583.00	417.82	591.88	59,580.00	0.00	5,050	62,173	75,950
9	2017	3,500.00	1,550.00	1,583.00	417.82	591.88	59,580.00	0.00	5,050	62,173	79,109
10	2018	3,500.00	1,550.00	1,458.00	417.82	766.88	59,580.00	51,331.00	5,050	113,554	144,913
11	2019	3,500.00	0.00	1,458.00	417.82	538.38	59,580.00	0.00	3,500	61,994	83,407
12	2020	3,500.00	0.00	1,208.00	417.82	538.38	59,580.00	0.00	3,500	61,744	86,514
13	2021	3,500.00	0.00	858.00	417.82	538.38	59,580.00	0.00	3,500	61,394	89,601
14	2022	3,500.00	0.00	858.00	417.82	538.38	59,580.00	0.00	3,500	61,394	93,296
15	2023	3,500.00	0.00	858.00	417.82	538.38	59,580.00	0.00	3,500	61,394	97,146
16	2024	3,500.00	0.00	950.00	417.82	538.38	59,580.00	0.00	3,500	61,486	101,299
17	2025	3,500.00	0.00	950.00	417.82	538.38	59,580.00	0.00	3,500	61,486	105,484
18	2026	3,500.00	0.00	950.00	417.82	538.38	59,580.00	0.00	3,500	61,486	109,844
19	2027	3,500.00	0.00	950.00	417.82	538.38	59,580.00	0.00	3,500	61,486	114,387
20	2028	3,500.00	0.00	950.00	417.82	538.38	59,580.00	46,690.50	3,500	108,177	203,208
21	2029	3,500.00	0.00	950.00	417.82	538.38	59,580.00	0.00	3,500	61,486	124,054
22	2030	3,500.00	0.00	0.00	417.82	320.59	94,900.00	0.00	3,500	95,638	195,719
23	2031	3,500.00	0.00	0.00	417.82	320.59	94,900.00	0.00	3,500	95,638	203,736
24	2032	3,500.00	0.00	0.00	417.82	320.59	94,900.00	0.00	3,500	95,638	212,085
25	2033	3,500.00	0.00	0.00	417.82	320.59	94,900.00	0.00	3,500	95,638	220,781
26	2034	3,500.00	0.00	0.00	417.82	320.59	94,900.00	0.00	3,500	95,638	229,836
27	2035	3,500.00	0.00	0.00	417.82	320.59	94,900.00	0.00	3,500	95,638	239,268
28	2036	3,500.00	0.00	0.00	417.82	320.59	94,900.00	0.00	3,500	95,638	249,091
29	2037	3,500.00	0.00	0.00	417.82	320.59	94,900.00	0.00	3,500	95,638	259,322
30	2038	3,500.00	0.00	0.00	417.82	320.59	94,900.00	0.00	3,500	95,638	269,978
31	2039	3,500.00	0.00	0.00	417.82	320.59	94,900.00	0.00	3,500	95,638	281,077
32	2040	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	299,140
33	2041	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	311,596
34	2042	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	324,580
35	2043	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	338,114
36	2044	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	352,223
37	2045	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	366,932
38	2046	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	382,266
39	2047	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	398,252

Pet. Tyrone Stephens, Jr.
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GROWTH RATE	6.0%	6.0%	4.0%	4.0%	4.0%	4.0%					
AGE	YEAR										
40	2048	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	414,920
41	2049	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	432,299
42	2050	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	450,420
43	2051	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	469,315
44	2052	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	489,019
45	2053	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	509,567
46	2054	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	530,996
47	2055	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	553,346
48	2056	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	576,655
49	2057	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	600,968
50	2058	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	626,328
51	2059	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	652,781
52	2060	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	680,377
53	2061	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	709,166
54	2062	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	739,200
55	2063	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	770,536
56	2064	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	803,232
57	2065	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	837,348
58	2066	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	872,948
59	2067	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	910,098
60	2068	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	948,868
61	2069	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	989,330
62	2070	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	1,031,562
63	2071	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	1,075,643
64	2072	5,087.21	0.00	0.00	17.82	320.59	94,900.00	0.00	5,087	95,238	1,121,655
65	2073	3,917.21	0.00	0.00	17.82	320.59	94,900.00	0.00	3,917	95,238	1,131,092
66	2074	3,917.21	0.00	0.00	17.82	320.59	94,900.00	0.00	3,917	95,238	1,178,920
67	2075	3,917.21	0.00	0.00	17.82	320.59	94,900.00	0.00	3,917	95,238	1,228,817
68	2076	3,917.21	0.00	0.00	17.82	320.59	94,900.00	0.00	3,917	95,238	1,280,873
69	2077	3,917.21	0.00	0.00	17.82	320.59	94,900.00	0.00	3,917	95,238	1,335,186
70	2078	3,917.21	0.00	0.00	17.82	320.59	94,900.00	0.00	3,917	95,238	1,391,856
71	2079	3,917.21	0.00	0.00	17.82	320.59	94,900.00	0.00	3,917	95,238	1,450,989
72	2080	3,917.21	0.00	0.00	17.82	320.59	94,900.00	0.00	3,917	95,238	1,512,695
73	2081	3,917.21	0.00	0.00	17.82	320.59	94,900.00	0.00	3,917	95,238	1,577,088
74	2082	3,917.21	0.00	0.00	17.82	320.59	94,900.00	0.00	3,917	95,238	1,644,291
		301,550	9,300	19,963	12,047	39,982	6,042,560	98,022	310,850	6,212,574	38,393,784
		4.62%	0.14%	0.31%	0.18%	0.61%	92.63%	1.50%			100.00%

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