

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MARK ELECCION,

*

Petitioner,

*

*

No. 09-105V

Special Master Christian J. Moran

v.

*

*

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

*

Filed: May 18, 2011

Respondent.

*

Stipulation; influenza vaccine;
Guillain-Barré Syndrome

UNPUBLISHED DECISION¹

Ron C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioner;
Julia W. McInerney, U.S. Department of Justice, Washington, D.C., for Respondent.

On May 17, 2011, the parties filed a joint stipulation concerning the petition for compensation filed by Mark Eleccion on February 19, 2009. In his petition, the petitioner alleged that the influenza (“flu”) vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which petitioner received on December 7, 2006, caused petitioner to develop Guillain-Barré Syndrome (“GBS”) that was caused-in-fact by his receipt of the flu vaccine, the effects of which lasted for more than six months.

Respondent denies that the flu vaccine caused petitioner’s GBS and current disabilities, and denies that his current disabilities are sequelae of his alleged injury.

¹ Because this unpublished decision contains a reasoned explanation for the special master’s action in this case, the special master intends to post it on the United States Court of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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$824,665.08, which represents damages for first year medical expenses and home modification costs (\$97,331.00), lost wages (\$548,761.00), past and future pain and suffering (\$160,000.00), and past unreimburseable expenses (\$18,573.08); and**
- B. An amount sufficient to purchase the annuity contract described in the attached stipulation (paragraph 10), paid to the life insurance company from which the annuity will be purchased (the “Life Insurance Company”).**

The above represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 9-105V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.
IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MARK ELECCION,)	
)	
Petitioner,)	
)	
v.)	No. 09-105V
)	Special Master Moran
SECRETARY OF HEALTH AND)	ECF
HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Mark Eleccion, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of the influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received a flu immunization on December 7, 2006.
3. The vaccine was administered within the United States.
4. Petitioner alleges that he developed Guillain Barre syndrome ("GBS") that was caused-in-fact by his receipt of the flu vaccine, and that he experienced residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his condition.
6. Respondent denies that the flu vaccine caused petitioner's GBS and current

disabilities, and denies that his current disabilities are sequelae of his alleged injury.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum payment in the form of a check payable to petitioner of \$824,665.08, which represents damages for first year medical expenses and home modification costs (\$97,331.00), lost wages (\$548,761.00), past and future pain and suffering (\$160,000.00), and past unreimburseable expenses (\$18,573.08); and
- b. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

The above amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. The Life Insurance Company must have a minimum of \$250,000,000.00 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.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of petitioner, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for the following life care items as depicted in Tab A.

a. Health Insurance Costs

For future unreimbursable health insurance costs, beginning on the first anniversary of the date of judgment in 2012, an annual amount of \$5,541.48 to be paid up to the anniversary of the date of judgment in 2027, then, beginning on the anniversary of the date of judgment in 2027, an annual amount of \$2,539.00 to be paid for the remainder of petitioner's life, all amounts increasing at the rate of six percent (6%), compounded annually from the date of judgment;

b. Physical Strength Training Services

For future unreimbursable physical strength training services, beginning on the first anniversary of the date of judgment in 2012, an annual amount of \$824.00 to be paid up to the anniversary of the date of judgment in 2021, then, beginning on the anniversary of the date of judgment in 2021, an annual amount of \$747.00 to be paid for the remainder of petitioner's life, all amounts increasing at the rate of four percent (4.0%), compounded annually from the date of judgment;

c. Supplies and Equipment Costs

For future unreimbursable supplies and equipment costs, beginning on the anniversary of the date of judgment in 2012, an annual amount of \$282.89 to be paid up to the anniversary of the date of judgment in 2015, then beginning on the anniversary of the date of judgment in 2015, an annual amount of \$367.84 to be paid up to the anniversary of the date of judgment in 2016, then, beginning on the anniversary of the date of judgment in 2016, an annual amount of \$299.88 to be paid up to the anniversary of the date of judgment in 2017, then, beginning on the anniversary of the date of judgment in 2017, an annual amount of \$242.38 to be paid up to the anniversary of the date of judgment in 2022, then, beginning on the anniversary of the date of judgment in 2022, an annual amount of \$460.84 to be paid up to the anniversary of the date of judgment in 2023, then, beginning on the anniversary of the date of judgment in 2023, an annual amount of \$244.89 to be paid up to the anniversary of the date of judgment in 2027, then, beginning on the anniversary of the date of judgment in 2027, an annual amount of \$557.89 to be paid up to the anniversary of the date of judgment in 2028, then, beginning on the anniversary of the date of judgment in 2028, an annual amount of \$539.22 to be paid for the remainder of petitioner's life, all amounts increasing at the rate of four percent (4.0%), compounded annually from the date of judgment;

d. Home Health Services

For future unreimbursable home health services, beginning on the anniversary of the date of judgment in 2022, an annual amount of \$17,472.00 to be paid up to the anniversary of the date of judgment in 2032, then, beginning on the anniversary of the date of judgment in 2032, an annual amount of \$26,208.00 to be paid for the remainder of petitioner's life, all amounts increasing at the rate of four percent (4.0%), compounded annually from the date of judgment;

e. Transportation Costs

For future unreimbursable transportation costs, on the anniversary of the date of judgment in 2017 a lump sum amount of \$52,995.00, then beginning on the anniversary of the date of judgment in 2018, an annual amount of \$4,239.60 to be paid for the remainder of petitioner's life, all amounts increasing at the rate of four percent (4%) compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to petitioner in monthly, quarterly, annual, or other installments, except as otherwise noted in subparagraph (e) above. The "annual amounts" set forth above describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment. Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as he is alive at the time a particular payment is due. Written notice to the Secretary of Health and Human Services and the Life Insurance Company shall be provided within twenty (20) days of Mark Eleccion's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and

Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

13. Petitioner and his attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees, litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation either immediately or as part of the annuity contract, will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. §300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

16. In return for the payments described in paragraphs 8 and 12, petitioner, in his individual capacity and on behalf of his heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and

the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on December 7, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about February 19, 2009, in the United States Court of Federal Claims as petition No. 09-105V.

17. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

18. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

19. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 12 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

20. Petitioner hereby authorizes the respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

21. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused petitioner's GBS or current disabilities.

22. All rights and obligations of petitioners hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

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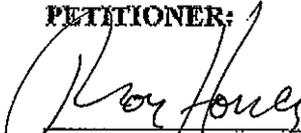
END OF STIPULATION

Respectfully submitted,

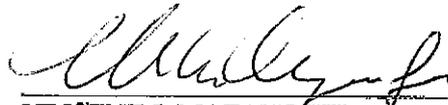
PETITIONER:


MARK ELECCION

**ATTORNEY OF RECORD FOR
PETITIONER:**


By Joseph M. Pepper
Rule 83.1(c)(2)
RONALD C. HOMER
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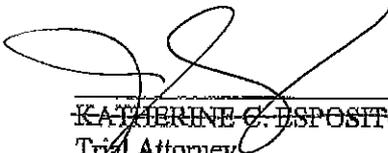
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Dated: 5/17/11

TAB A

Pet. Mark Election
D.O.B. 08/16/1962

DATE: 03/28/11
TIME: 03:18 PM

SUMMARY OF LIFE CARE ITEMS - RESPONDENT'S LIFE CARE PLAN dated December 10, 2010

ITEM OF CARE	GROWTH RATE	AGE	YEAR	Health Insurance	Physical Strength Training Services	Supplies & Equipment	Home Services	Transportation	Home Mods	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	
				6.0%	4.0%	4.0%	4.0%	4.0%	0.0%	4.0%	0.0%	4.0%	0.0%
49		2011		5,541.48	953.00	1,116.44	0.00	0.00	89,599.00	5,541	91,668	97,210	
50		2012		5,541.48	824.00	282.89	0.00	0.00	0.00	5,541	1,107	7,025	
51		2013		5,541.48	824.00	282.89	0.00	0.00	0.00	5,541	1,107	7,424	
52		2014		5,541.48	824.00	282.89	0.00	0.00	0.00	5,541	1,107	7,845	
53		2015		5,541.48	824.00	367.84	0.00	0.00	0.00	5,541	1,192	8,390	
54		2016		5,541.48	824.00	299.88	0.00	0.00	0.00	5,541	1,124	8,783	
55		2017		5,541.48	824.00	242.38	0.00	52,995.00	0.00	5,541	54,061	76,266	
56		2018		5,541.48	824.00	242.38	0.00	4,239.60	0.00	5,306	5,306	15,315	
57		2019		5,541.48	824.00	242.38	0.00	4,239.60	0.00	5,306	5,306	16,094	
58		2020		5,541.48	824.00	242.38	0.00	4,239.60	0.00	5,306	5,306	16,914	
59		2021		5,541.48	747.00	242.38	0.00	4,239.60	0.00	5,306	5,306	17,664	
60		2022		5,541.48	747.00	460.84	17,472.00	4,239.60	0.00	22,919	22,919	45,803	
61		2023		5,541.48	747.00	244.89	17,472.00	4,239.60	0.00	22,703	22,703	47,500	
62		2024		5,541.48	747.00	244.89	17,472.00	4,239.60	0.00	22,703	22,703	49,623	
63		2025		5,541.48	747.00	244.89	17,472.00	4,239.60	0.00	22,703	22,703	51,844	
64		2026		5,541.48	747.00	244.89	17,472.00	4,239.60	0.00	22,703	22,703	54,168	
65		2027		2,539.00	747.00	557.89	17,472.00	4,239.60	0.00	2,539	28,016	49,559	
66		2028		2,539.00	747.00	539.22	17,472.00	4,239.60	0.00	2,539	22,998	51,634	
67		2029		2,539.00	747.00	539.22	17,472.00	4,239.60	0.00	2,539	22,998	53,837	
68		2030		2,539.00	747.00	539.22	17,472.00	4,239.60	0.00	2,539	22,998	56,135	
69		2031		2,539.00	747.00	539.22	17,472.00	4,239.60	0.00	2,539	22,998	58,594	
70		2032		2,539.00	747.00	539.22	26,208.00	4,239.60	0.00	31,734	31,734	80,946	
71		2033		2,539.00	747.00	539.22	26,208.00	4,239.60	0.00	31,734	31,734	84,356	
72		2034		2,539.00	747.00	539.22	26,208.00	4,239.60	0.00	31,734	31,734	87,913	
73		2035		2,539.00	747.00	539.22	26,208.00	4,239.60	0.00	31,734	31,734	91,624	
74		2036		2,539.00	747.00	539.22	26,208.00	4,239.60	0.00	31,734	31,734	95,494	
75		2037		2,539.00	747.00	539.22	26,208.00	4,239.60	0.00	31,734	31,734	99,532	
76		2038		2,539.00	747.00	539.22	26,208.00	4,239.60	0.00	31,734	31,734	103,744	
77		2039		2,539.00	747.00	539.22	26,208.00	4,239.60	0.00	31,734	31,734	108,139	
				121,671	22,562	12,314	584,384	146,266	89,599	121,671	655,125	1,549,313	
				15.66%	2.90%	1.59%	49.48%	18.83%	11.53%				100.00%

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