

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

No. 08-819V

Filed: December 18, 2013

JESSICA MURA,

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Petitioner,

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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*

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Respondent.

*

Damages Decision Based on Proffer;
Influenza Vaccine; Acute Disseminated
Encephalomyelitis; ADEM.

Corey J. Hogan, Esq., Hogan, Willig, Esquire, Amherst, NY, for petitioner.
Linda S. Renzi, Esq., U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Vowell, Chief Special Master:

On November 18, 2008, Jessica Mura 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”], alleging that she developed acute disseminated encephalomyelitis (“ADEM”) as a result of the influenza vaccine she received on November 19, 2006.

On May 30, 2012, the special master previously assigned to this case issued a ruling on entitlement, finding petitioner entitled to compensation. This case was reassigned to me on September 5, 2013. On December 17, 2013, respondent filed a proffer on award of compensation (“Proffer”) detailing compensation for life care items, lost future earnings, pain and suffering, past unreimbursed expenses, and a Medicaid

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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, 116 Stat. 2899, 2913 (Dec. 17, 2002). In accordance with Vaccine Rule 18(b), petitioners have 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.

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).

lien. According to respondent's Proffer, petitioner agrees to the proposed award of compensation. Pursuant to the terms stated in the attached Proffer, **I award petitioner:**

1. **A lump sum payment of \$1,648,817.90 in the form of a check payable to petitioner, Jessica Mura**, representing life care expenses for Year 1 (\$152,773.00), compensation for lost future earnings (\$1,254,833.00), compensation for past unreimbursed expenses (\$1,008.90), and pain and suffering (\$240,203.00);
2. **A lump sum payment of \$618,582.67**, representing compensation for satisfaction of the State of New York Medicaid lien, **payable jointly to Jessica Mura, and**

**Erie County Department of Social Services
Rath Building
95 Franklin Street, 7th Floor
Buffalo, New York 14202
ATTN: Mr. Kevin Murphy
716-858-6538**

Petitioner agrees to endorse this payment to the Erie County Department of Social services.

3. An amount sufficient to purchase an annuity contract described in Section II.C. of the attached Proffer.

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.³

IT IS SO ORDERED.

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

³ 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 THE SPECIAL MASTERS

JESSICA MURA,)	
)	
)	
)	No. 08-819V
)	
Petitioner,)	Chief Special Master
)	Vowell
)	
v.)	
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT'S RECOMMENDATIONS ON DAMAGES

Respondent submits the following recommendations regarding items of compensation to be awarded to petitioner under the Vaccine Act.

I. Items of Compensation

A. LIFE CARE ITEMS

The parties engaged life care planners: Linda Curtis, RN, MS, CCM, CNLCP for the Respondent and Mary Salerno, RN, BS, CDMS, CRRN, CLCP, LNCC, CCM, CBIS for the petitioner, to provide an estimation of Jessica Mura's future vaccine-injury related needs. All items identified in the agreed life care plan are supported by the evidence and are illustrated by the chart entitled **TAB A: Summary of Life Care Items**¹. Respondent proffers Jessica Mura

¹ The chart at Tab A illustrates the annual benefits as contained in the life care plan. The annual benefit years run from the date of judgment

should be awarded all items of compensation that are set forth in the agreed life care plan and illustrated by the chart attached as **Tab A**. Petitioner agrees. Respondent further proffers that the appropriate growth rate for life care items of compensation should be four percent (4.0%) for non-medical items and six percent (6.0%) for medical items, compounded annually from the date of judgment, as set forth in **Tab B: Annuity Funding Portfolio**. Petitioner agrees.

B. LOST FUTURE EARNINGS

The parties agree that based upon the evidence in the record, Jessica Mura will not be able to engage in full-time gainful employment. Therefore, respondent proffers that Jessica Mura should be awarded lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Respondent proffers that the appropriate award for Jessica Mura's lost future earnings is \$1,254,833.00. Petitioner agrees.

C. PAIN AND SUFFERING

Respondent proffers that Jessica Mura should be awarded \$240,203.00 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). Petitioner agrees.

up to the first anniversary of the date of judgment and every year thereafter up to the anniversary of the date of judgment.

D. PAST UNREIMBURSED EXPENSES

Evidence supplied by petitioner document Jessica Mura's expenditure of past un-reimbursable expenses related to her vaccine-related injury. Respondent proffers that the petitioner is entitled to past un-reimbursed expenses in the amount of \$1,008.90. Petitioner agrees.

E. MEDICAID LIEN

Respondent proffers that Jessica Mura should be awarded funds to satisfy the State of New York Medicaid lien in the amount of \$618,582.67, which represents full satisfaction of any right of subrogation, assignment, claim, lien or cause of action the State of New York may have against any individual as a result of any Medicaid payments the State of New York has made to or on behalf of Jessica Mura from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about November 19, 2006, under Title XIX of the Social Security Act.

F. ATTORNEY'S 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 Jessica Mura for her future medical care needs should be made through a combination of a one-time cash payment and future

annuity payments as described below, and request that the special master's decision and the Court's judgment reflect the following items of compensation.

Respondent proffers and Petitioner agrees that an award of compensation include the following elements:

A. A lump sum payment of **\$1,648,817.90**, representing life care expenses for Year 1 (**\$152,773.00**), compensation for lost future earnings (**\$1,254,833.00**), compensation for past unreimbursed expenses (**\$1,008.90**) and pain and suffering (**\$240,203.00**), in the form of a check payable to Jessica Mura.

B. A lump sum payment of **\$618,582.67**, representing compensation for satisfaction of the State of New York Medicaid lien, payable jointly to Jessica Mura, and

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Petitioner agrees to endorse this payment to Erie County Department of Social Services.

C. An amount sufficient to purchase an annuity contract,² 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, and paid

² In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

to the life insurance company³ from which the annuity will be purchased.⁴ Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent payments shall be provided through respondent's purchase of an annuity, which annuity will make payments directly to the petitioner, Jessica Mura, only so long as Jessica Mura is alive at the time a particular payment is due. The "annual amounts" set forth in **Tab B** describe the total year sum to be paid and do not require that the payment be made in one single payment.

The parties agree that Jessica Mura is a competent adult and that no Guardians/Conservators of her Estate will be required.

1. Growth Rates

Respondent proffers that a four percent (4.0%) growth rate should be applied to all non-medical life care items and a six percent (6.0%) growth rate should be applied to all medical life care items. The benefits illustrated in the chart at **Tab B** that are to be paid through annuity payments should grow as follows:

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.

⁴ 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 Injury Compensation Program System of

four percent (4.0%) compounded annually from the date of judgment and six percent (6.0%) compounded annually from the date of judgment. Petitioner agrees.

2. Life-contingent Annuity

Jessica Mura will continue to receive the annuity payments for future medical care from the Life Insurance Company only so long as Jessica Mura is alive at the time that a particular payment is due. Written notice to the Secretary of Health and Human Services and the Life Insurance Company shall be made within twenty (20) days of Jessica Mura's death.

III. Summary of Recommended Payments Following Judgment

- A. Lump Sum paid to Jessica Mura: **\$1,648,817.90.**
- B. Reimbursement of Medicaid Lien: **\$618,582.67**
- C. An amount sufficient to purchase the annuity contract described above in section II. C.

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General

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s/Linda S. Renzi

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December 17, 2013