

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 11-301V

Filed: January 23, 2017

\* \* \* \* \*

H.J.,

\*

UNPUBLISHED

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Petitioner,

\*

Special Master Sanders

\*

v.

\*

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

\*

Decision on Proffer; Damages;

\*

Tetanus-Diphtheria-Acellular-

\*

Pertussis (“Tdap”) Vaccine;

\*

Rheumatoid Arthritis

Respondent.

\*

\*

\* \* \* \* \*

Ronald Homer, Conway, Homer, P.C., Boston, MA for Petitioner.

Linda Renzi, United States Department of Justice, Washington, DC, for Respondent.

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

On May 13, 2011, H.J. (“Petitioner”) filed a petition pursuant to the National Vaccine Injury Compensation Program.<sup>2</sup> 42 U.S.C. §§ 300aa-1 to -34 (2012). Petitioner alleges that she received a Tetanus-Diphtheria-Pertussis (“Tdap”) vaccine on October 10, 2008, and she suffered from rheumatoid arthritis as a result of the vaccine. Petition (“Pet”) at 1.

On August 31, 2015, Special Master Hamilton-Fieldman issued a Ruling on Entitlement. ECF No. 59. She held that Petitioner’s theory and medical records satisfied the three-prong test

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<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this ruling on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2012)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b).

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

in *Althen v. Secretary of Health and Human Services*, 418 F.2d 1274, 1278 (Fed. Cir. 2005). Respondent was unable to rebut Petitioner's *prima facie* case by showing that Petitioner's injury was caused by unrelated factors. *Id.* at 2.

The parties filed a joint status report on December 5, 2016, informing the Court that they had reached an agreement regarding petitioner's damages. ECF No. 87. On January 10, 2017, the case was reassigned to the undersigned. ECF No. 90.

On January 12, 2017, Respondent filed a Proffer on Award of Compensation ("Proffer"). Based on the record as a whole, the undersigned finds that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the Proffer, attached as Appendix A, the undersigned awards Petitioner:

- A. **A lump sum payment of \$1,360,063.00 in the form of a check payable to Petitioner, H.J.; and**
- B. **An amount sufficient to purchase the annuity described in section II. B. of the Proffer, Appendix A, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").**

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** herewith.<sup>3</sup>

**IT IS SO ORDERED.**

s/Herbrina D. Sanders  
Herbrina D. Sanders  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

H.J.,	)	
	)	
	)	
Petitioner,	)	
	)	No. 11-301V
v.	)	Special Master Herbrina D. Sanders
	)	ECF
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent,	)	
	)	

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

### A. Life Care Items

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awarded all items of compensation set forth in the joint life care plan and illustrated by the chart attached at Tab A. Petitioner agrees.

**B. Lost Earnings**

The parties agree that based upon the evidence of record, petitioner will never again be gainfully employed. Therefore, respondent proffers that petitioner should be awarded lost past and future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Respondent proffers that the appropriate award for petitioner's lost past and future earnings is \$1,111,018.00. This amount reflects that the award for lost future earnings has been reduced to net present value. Petitioner agrees.

**C. Pain and Suffering**

Respondent proffers that petitioner should be awarded \$210,000.00 in actual and projected pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). This amount reflects that the award for projected pain and suffering has been reduced to net present value. Petitioner agrees.

**D. Past Un-reimbursable Expenses**

Evidence supplied by petitioner documents her expenditure of past un-reimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past un-reimbursable expenses in the amount of \$21,920.00. Petitioner agrees.

**E. Medicaid Lien**

To the best of respondent's knowledge and upon on the representation of petitioner, petitioner has never received Medicaid benefits. Accordingly, there is no Medicaid lien.

**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 H.J. should be made through a combination of a one-time 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 for all compensation<sup>1</sup> available under 42 U.S.C. § 300aa-15(a).

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

- A. A lump sum payment of **\$1,360,063.00**, (representing compensation for lost

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<sup>1</sup> Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings and future projected pain and suffering and the parties reserve the right to move the Court for appropriate relief.

past and future earnings (\$1,111,018.00), pain and suffering (\$210,000.00), past unreimbursable expenses (\$21,920.00), and life care expenses for Year One and a portion of life care expenses for year Two (\$17,125.00)), in the form of a check payable to petitioner; and

B. An amount sufficient to purchase an annuity contract,<sup>2</sup> 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 to the life insurance company<sup>3</sup> from which the annuity will be purchased<sup>4</sup>. Compensation

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<sup>2</sup> To satisfy the conditions set forth herein, in respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

<sup>3</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.

<sup>4</sup> Petitioner authorizes the disclosure of certain documents filed by the petitioner in this case consistent with the Privacy Act and the routine uses described in



for Year Two that was not previously paid in Year One (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 H.J., only so long as H.J. 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 structured settlement benefits" set forth in the chart at Tab A 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 six percent (6%) growth rate should be applied to all medical life care items. 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**

Petitioner will continue to receive the annuity payments from the Life

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the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

Insurance Company only so long as petitioner is alive at the time that a particular payment is due. Petitioner's estate shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of H.J.'s death.

### **3. Guardianship Issues**

Petitioner is a legally competent adult, and aforementioned payments will be made directly to petitioner.

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

- A. Lump sum paid to petitioner: **\$1,360,063.00**
- B. An amount sufficient to purchase the annuity contract described above in section II. B.

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

CATHARINE E. REEVES  
Deputy Director  
Torts Branch, Civil Division

ANN D. MARTIN  
Senior Trial Attorney  
Torts Branch, Civil Division



January 12, 2017

s/Linda S. Renzi  
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U.S. Department of Justice  
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Benjamin Franklin Station  
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Pet H J  
D.O.B. 02/01/1980

DATE: 01/11/17  
TIME: 03:03 PM

SUMMARY OF LIFE CARE ITEMS - JOINT LIFE CARE PLAN updated December 19, 2016

ITEM OF CARE	Insurance	Ancillary Services	Equipment	Medications	Home Services	Transportation	TOTALS of Items with a 6.0% Growth Rate	TOTALS of Items with a 4.0% Growth Rate	TOTALS OF 6.0% & 4.0% ITEMS & APPLYING THE GROWTH RATE	
GROWTH RATE	6.0%	4.0%	4.0%	4.0%	4.0%	4.0%				
AGE	YEAR									
37	2017	9,236.40	810.00	536.51	158.90	5,922.00	236.62	9,236	7,664	16,900
38	2018	9,236.40	600.00	97.99	158.90	5,832.00	210.84	9,236	6,900	16,966
39	2019	9,236.40	300.00	97.99	158.90	5,832.00	210.84	9,236	6,600	17,516
40	2020	9,236.40	300.00	97.99	158.90	5,832.00	210.84	9,236	6,600	18,424
41	2021	9,236.40	300.00	97.99	158.90	5,832.00	210.84	9,236	6,600	19,381
42	2022	9,236.40	79.98	97.99	158.90	5,832.00	210.84	9,236	6,380	20,122
43	2023	9,236.40	0.00	97.99	158.90	5,832.00	210.84	9,236	6,300	21,073
44	2024	9,236.40	0.00	97.99	158.90	5,832.00	210.84	9,236	6,300	22,178
45	2025	9,236.40	0.00	306.93	158.90	5,832.00	210.84	9,236	6,509	23,629
46	2026	9,236.40	0.00	127.84	158.90	5,832.00	210.84	9,236	6,330	24,614
47	2027	9,236.40	0.00	127.84	158.90	5,832.00	210.84	9,236	6,330	25,910
48	2028	9,236.40	0.00	127.84	158.90	5,832.00	210.84	9,236	6,330	27,278
49	2029	9,236.40	0.00	127.84	158.90	5,832.00	210.84	9,236	6,330	28,719
50	2030	9,236.40	0.00	2,717.01	158.90	5,832.00	210.84	9,236	8,919	34,551
51	2031	9,236.40	0.00	757.25	158.90	5,832.00	210.84	9,236	6,959	32,933
52	2032	9,236.40	0.00	757.25	158.90	5,832.00	210.84	9,236	6,959	34,668
53	2033	9,236.40	0.00	757.25	158.90	5,832.00	210.84	9,236	6,959	36,498
54	2034	9,236.40	0.00	757.25	158.90	5,832.00	210.84	9,236	6,959	38,427
55	2035	9,236.40	0.00	757.25	158.90	5,832.00	210.84	9,236	6,959	40,461
56	2036	9,236.40	0.00	757.25	158.90	10,824.00	210.84	9,236	11,951	53,125
57	2037	9,236.40	0.00	757.25	158.90	10,824.00	210.84	9,236	11,951	55,808
58	2038	9,236.40	0.00	757.25	158.90	10,824.00	210.84	9,236	11,951	58,633
59	2039	9,236.40	0.00	757.25	158.90	10,824.00	210.84	9,236	11,951	61,607
60	2040	9,236.40	0.00	757.25	158.90	10,824.00	210.84	9,236	11,951	64,737
61	2041	9,236.40	0.00	757.25	158.90	10,824.00	210.84	9,236	11,951	68,032
62	2042	9,236.40	0.00	757.25	158.90	10,824.00	210.84	9,236	11,951	71,501
63	2043	9,236.40	0.00	757.25	158.90	10,824.00	210.84	9,236	11,951	75,154
64	2044	9,236.40	0.00	757.25	158.90	10,824.00	210.84	9,236	11,951	79,000
65	2045	4,473.60	0.00	781.84	158.90	10,740.00	210.84	4,474	11,892	58,527
66	2046	4,473.60	0.00	756.14	158.90	10,740.00	210.84	4,474	11,866	61,245
67	2047	4,473.60	0.00	756.14	158.90	10,740.00	210.84	4,474	11,866	64,180
68	2048	4,473.60	0.00	756.14	158.90	10,740.00	210.84	4,474	11,866	67,261
69	2049	4,473.60	0.00	756.14	158.90	10,740.00	210.84	4,474	11,866	70,496

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GROWTH RATE	6.0%	4.0%	4.0%	4.0%	4.0%	4.0%				
AGE	YEAR									
70	2050	4,473.60	0.00	756.14	158.90	10,740.00	210.84	4,474	11,866	73,893
71	2051	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	97,477
72	2052	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	102,025
73	2053	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	106,794
74	2054	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	111,795
75	2055	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	117,039
76	2056	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	122,540
77	2057	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	128,310
78	2058	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	134,362
79	2059	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	140,712
80	2060	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	147,375
81	2061	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	154,366
82	2062	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	161,702
83	2063	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	169,402
84	2064	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	177,484
85	2065	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	185,967
86	2066	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	194,872
87	2067	4,473.60	480.00	756.14	158.90	15,732.00	14.20	4,474	17,141	204,222
		361,512	10,550	32,776	8,104	540,198	7,436	361,512	599,064	3,939,893

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