

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

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EDWARD ANTHONY,	*	
	*	No. 14-680
Petitioner,	*	Special Master Christian J. Moran
	*	
v.	*	Filed: March 2, 2016
	*	
SECRETARY OF HEALTH	*	Proffer; damages; influenza (“flu”)
AND HUMAN SERVICES,	*	vaccine; shoulder injury related to
	*	vaccine administration; SIRVA
Respondent.	*	

* * * * *

Richard Gage, Richard Gage, P.C., Cheyenne, WY, for Petitioner;
Gordon Shemin, U.S. Dep’t of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION¹

On July 30, 2014, Edward Anthony filed a petition under the National Childhood Vaccine Injury Act, 42 C.F.R. §300aa-10 through 34 (2012), alleging that he suffered a chronic left shoulder injury related to his receipt of an influenza (“flu”) vaccination in his left shoulder on October 31, 2011.

On October 28, 2014, a ruling found Mr. Anthony entitled to compensation.

After substantial negotiations, filings, and a hearing on the pain and suffering component of damages, on February 22, 2016, respondent filed a status report regarding damages. Petitioner does not object to the status report. Petitioner and respondent were able to agree on petitioner’s past and future medical care, and thus the status report proffers those amounts. Disagreement

¹ The E-Government Act, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

remains about the magnitude of damages for petitioner's pain and suffering. The undersigned, however, held a hearing on February 2, 2016 on the pain and suffering issue, and subsequent orders on February 16 and 19, 2016, decided the petitioner's amount of compensation for pain and suffering. Based on the February 19, 2016 order, petitioner and respondent are able to proffer the net present value of petitioner's pain and suffering.

The parties agree to the damages outlined in the February 22, 2016, status report, and the undersigned finds the damages reasonable.

Damages outlined in the status report:

- 1. A lump sum payment of \$291,842.00 representing compensation for life care expenses expected to be incurred during the first year after judgment (\$42,530.00), pain and suffering (\$248,540.00), and past unreimbursable expenses (\$772.00), in the form of a check payable to petitioner, Edward Anthony.**
- 2. 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 charts at Appendix A, attached hereto, paid 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 years shall be provided through respondent's purchase of an annuity, which annuity shall make payments directly to petitioner, Edward Anthony, only so long as Edward Anthony is alive at the time a**

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

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

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 Edward Anthony's death. At the Secretary's sole discretion, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The totals set forth in Appendix 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. 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 Appendix 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.

3. The above amounts represent 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 14-680 according to this decision and the attached stipulation.⁵

Any questions may be directed to my law clerk, Dan Hoffman, at (202) 357-6360.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

⁵ Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

Pet. Edward Anthony
D.O.B. 07/06/1949

DATE: 02/17/16
TIME: 07:22 PM

SUMMARY OF LIFE CARE ITEMS - AGREED LIFE CARE PLAN dated February 15, 2016

ITEM OF CARE		Insurance	Medical Care	Ancillary Services	Supplies	Trans- portation	Home Services	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%	6.0%	6.0%	4.0%	4.0%			
AGE	YEAR									
67	2016	1,454.00	11,640.11	2,894.50	619.96	670.00	23,295.87	16,609	23,966	42,530
68	2017	5,035.86	0.00	480.00	120.37	25.00	23,280.96	5,636	23,306	31,541
69	2018	5,035.86	0.00	480.00	120.37	25.00	23,280.96	5,636	23,306	32,929
70	2019	5,035.86	0.00	480.00	120.37	25.00	23,280.96	5,636	23,306	34,380
71	2020	5,035.86	0.00	480.00	120.37	25.00	23,280.96	5,636	23,306	35,898
72	2021	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	36,804
73	2022	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	38,422
74	2023	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	40,114
75	2024	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	41,883
76	2025	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	43,733
77	2026	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	45,667
78	2027	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	47,689
79	2028	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	49,804
80	2029	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	52,016
81	2030	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	54,330
82	2031	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	56,750
83	2032	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	59,282
84	2033	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	61,931
85	2034	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	64,703
86	2035	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	67,603
87	2036	5,035.86	0.00	0.00	120.37	25.00	23,280.96	5,156	23,306	70,638
		102,171	11,640	4,815	3,027	1,170	488,915	121,653	490,085	1,008,645
		16.70%	1.90%	0.79%	0.49%	0.19%	79.92%			100.00%

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ANNUITY FUNDING PORTFOLIO

AGREED LIFE CARE PLAN dated February 15, 2016

4.0 % and 6.0% GROWTH RATES

DATE: 02/17/16
TIME: 07:22 PM

Pet. Edward Anthony
D.O.B. 07/06/1949

		Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Settlement Item		TOTAL	ANNUAL	CASH &	ANNUITY	ANNUITY	ANNUITY	ANNUAL	CUMULATIVE
Starting Amount		MEDICAL	STRUCTURED	ANNUITY	5,793	25,209	540	SAFETY	SAFETY
Inflation Factor		CARE NEEDS	SETTLEMENT	LUMP	6.00%	4.00%	6.00%	MARGIN	MARGIN
Beginning Year		2016	BENEFITS	SUMS	2017	2017	2017	2016	2016
Ending Year		2036			LIFE	LIFE	2020	2036	2036
AGE	YEAR	TOTAL	S/S	Cash &	Deferred	Deferred	Deferred	Safety	Cum.Safety
		NEEDS	TOTAL	Lump Sums	Annuity	Annuity	Annuity	Margin	Margin
67	2016	42,530	42,530	42,530				0	0
68	2017	31,541	31,542		5,793	25,209	540	1	2
69	2018	32,929	32,930		6,141	26,217	572	1	3
70	2019	34,380	34,382		6,509	27,266	607	2	5
71	2020	35,898	35,899		6,900	28,357	643	2	6
72	2021	36,804	36,804		7,314	29,491		1	7
73	2022	38,422	38,423		7,752	30,671		1	8
74	2023	40,114	40,115		8,217	31,897		1	9
75	2024	41,883	41,884		8,711	33,173		1	10
76	2025	43,733	43,733		9,233	34,500		1	11
77	2026	45,667	45,667		9,787	35,880		1	12
78	2027	47,689	47,690		10,374	37,315		1	12
79	2028	49,804	49,805		10,997	38,808		1	13
80	2029	52,016	52,017		11,657	40,360		1	14
81	2030	54,330	54,331		12,356	41,975		1	15
82	2031	56,750	56,751		13,097	43,654		1	16
83	2032	59,282	59,283		13,883	45,400		1	17
84	2033	61,931	61,932		14,716	47,216		1	18
85	2034	64,703	64,704		15,599	49,105		1	19
86	2035	67,603	67,604		16,535	51,069		1	20
87	2036	70,638	70,639		17,527	53,112		1	21
ITEMIZED TOTALS		1,008,645	1,008,667	42,530	213,099	750,676	2,362	21	21

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