

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**  
**E-Filed: February 28, 2012**

\* \* \* \* \*

TYSHEEM HARGROVE, JR., a minor,  
 by his parents and natural guardians,  
 FELICIA WISE and  
 TYSHEEM HARGROVE, SR.

Petitioners,

v.

SECRETARY OF THE  
 DEPARTMENT OF  
 HEALTH AND HUMAN SERVICES,

Respondent.

\* \* \* \* \*

\* UNPUBLISHED  
 \*  
 \* No. 5-694V  
 \*  
 \* Chief Special Master  
 \* Campbell-Smith  
 \*  
 \*  
 \* Proffer on Award of Compensation;  
 \* dTap Vaccine; Transverse Myelitis;  
 \* Mild Paraplegia; Mild Neurogenic  
 \* Bowel and Bladder  
 \*  
 \*  
 \*

Lawrence Cohan, Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C.,  
 Philadelphia, PA, for petitioners.

Linda Renzi, U.S. Dep’t of Justice, Washington, DC, for respondent.

**DECISION AWARDDING DAMAGES<sup>1</sup>**

On June 27, 2005, Felicia Wise and Tysheem Hargrove, Sr. (“petitioners”) filed a petition on behalf of their minor child, seeking compensation under the National Vaccine Injury Compensation Program (“Vaccine Program”).<sup>2</sup>

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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 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). 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). Otherwise, “the entire” decision will be available to the public. Id.

Petitioners allege that as a result of the diphtheria-tetanus-acellular-pertussis vaccine (“dTap”) and/or other vaccinations administered to Tysheem, Jr. on May 20, 2003, he thereafter suffered from transverse myelitis (TM), mild paraplegia, and mild neurogenic bowel and bladder.

Following a hearing conducted on May 30, 2007, a ruling was issued in this case on April 14, 2009, finding in favor of entitlement. See Entitlement Ruling, Apr. 14, 2009.

Accordingly, the parties jointly engaged a life care planner to provide an estimation of Tysheem, Jr.’s future vaccine injury-related needs. On March 29, 2011, respondent filed a life care plan. See Life Care Plan, Resp’t’s Ex. F, Mar. 29, 2011.

On February 27, 2012, respondent filed a Proffer on Award of Compensation (“Proffer”). Petitioner agrees with all aspects of the Proffer.

Based on the record as a whole, the undersigned finds that the Proffer is reasonable and appropriate and that petitioner is entitled to an award as stated in the Proffer. Pursuant to the terms stated in that Proffer, the court awards to petitioner:

- A lump sum payment of **\$201,850.71**, in the form of a check payable to petitioners, as the guardians/conservators of Tysheem Hargrove, Jr., for the benefit of Tysheem Hargrove, Jr., representing compensation for pain and suffering (\$160,534.69) and life care expenses for Year One (\$41,316.02). No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardians/conservators of Tysheem Hargrove, Jr.’s estate.
- A lump sum payment of **\$1,630.00**, in the form of a check payable to petitioners, representing compensation for past unreimbursable expenses.
- A lump sum payment of **\$54,681.55**, in the form of a check jointly payable to petitioners and Commonwealth of Pennsylvania DPTL/Casualty Unit, P.O. Box 8486, Harrisburg, PA 17105-8486, Attn: Ms. Jennifer Hartman, representing compensation for reimbursement of the Commonwealth of Pennsylvania Medical lien.

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<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 (2006) (“Vaccine Act” or “Act”). All citations in this decision to individual sections of the Act are to 42 U.S.C.A. § 300aa.

- An amount sufficient to purchase an annuity contract, subject to the conditions described in paragraph II.D of the attached Proffer, paid to the life insurance company from which the annuity will be purchased.

Proffer at II.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' Proffer.<sup>3</sup>

**IT IS SO ORDERED.**

s/Patricia E. Campbell-Smith  
Patricia E. Campbell-Smith  
Chief 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.



B. Lost Future Earnings

The parties agree that based upon the evidence of record, Tysheem Hargrove, Jr. will more likely than not be gainfully employed in the future. Therefore, respondent proffers that Tysheem Hargrove, Jr. should not be awarded lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(B). Petitioners agree.

C. Pain and Suffering

Respondent proffers that Tysheem Hargrove, Jr. should be awarded \$160,534.69 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 Unreimbursable Expenses

Evidence supplied by petitioners documents their expenditure of past unreimbursable expenses related to Tysheem Hargrove, Jr.'s vaccine-related injury. Respondent proffers that petitioners should be awarded past unreimbursable expenses in the amount of \$1,630.00. Petitioners agree.

E. Medicaid Lien

Respondent proffers that Tysheem Hargrove, Jr. should be awarded funds to satisfy the Commonwealth of Pennsylvania lien in the amount of \$54,681.55, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the Commonwealth of Pennsylvania may have against any individual as a result of any Medicaid payments the Commonwealth of Pennsylvania has made to or on behalf of Tysheem Hargrove, 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 May 20, 2003, under Title XIX of the Social Security Act.

**II. Form of the Award**

The parties recommend that the compensation provided to Tysheem Hargrove, 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 \$201,850.71, representing compensation for pain and suffering (\$160,534.69) and life care expenses for Year One (\$41,316.02), in the form of a check payable to petitioners as guardian(s)/conservator(s) of Tysheem Hargrove, Jr., for the benefit of Tysheem Hargrove, Jr. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of Tysheem Hargrove, Jr.'s estate;

B. A lump sum payment of \$1,630.00, representing compensation for past unreimbursable expenses, payable to Felicia Wise and Tysheem Hargrove, Sr., petitioners;

C. A lump sum payment of \$54,681.55, representing compensation for satisfaction of the Commonwealth of Pennsylvania Medicaid lien, payable jointly to petitioners and

Commonwealth of Pennsylvania  
DTPL/Casualty Unit  
P.O. Box 8486  
Harrisburg, PA 17105-8486  
Attn: Ms. Jennifer Hartman

Petitioners agree to endorse this payment to the Commonwealth.

D. 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, paid to the life insurance company<sup>3</sup> from which the annuity will be purchased.<sup>4</sup> 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 guardian(s)/conservator(s) of the estate of Tysheem Hargrove, Jr., for the benefit of Tysheem Hargrove, Jr., only so long as Tysheem Hargrove, Jr. is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to petitioners in monthly, quarterly, annual or other installments. The "annual amounts" set forth in the chart at Tab A describe only the total yearly sum to be paid to petitioners and do not require that the payment be made in one annual installment.

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<sup>2</sup> 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> 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 Records, No. 09-15-0056.

1. Growth Rate

Respondent proffers that a four percent (4%) growth rate should be applied to all non-medical life care items, and a five percent (5%) 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 five percent (5%) compounded annually from the date of judgment for medical items. Petitioners agree.

2. Life-contingent annuity

Petitioners will continue to receive the annuity payments from the Life Insurance Company only so long as Tysheem Hargrove, 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 Tysheem Hargrove, Jr.'s death.

3. Guardianship

No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of Tysheem Hargrove, Jr.'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of Tysheem Hargrove, 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 Tysheem Hargrove, 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 guardian(s)/conservative(s) of Tysheem Hargrove, Jr.'s estate:	<b>\$ 201,850.71</b>
B.	Lump sum paid to petitioners:	<b>\$ 1,630.00</b>
C.	Reimbursement for Medicaid lien:	<b>\$ 54,681.55</b>
D.	An amount sufficient to purchase the annuity contract described above in section II. D.	

Respectfully submitted,

TONY WEST  
Assistant Attorney General

MARK W. ROGERS  
Acting Director  
Torts Branch, Civil Division

VINCENT J. MATANOSKI  
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Senior Trial Counsel  
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s/Linda S. Renzi  
LINDA S. RENZI  
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Dated: February 27, 2012



## Appendix A: Items of Compensation for Tysheem Hargrove, Jr.

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Year 3	Compensation Year 4	Compensation Year 5	Compensation Year 6	Compensation Year 7	Compensation Year 8
				2012	2013	2014	2015	2016	2017	2018	2019
Fleets Enema	4%			47.88	47.88	47.88	47.88	47.88	47.88	47.88	47.88
Miralax	4%			119.94	119.94	119.94	119.94	119.94	119.94	119.94	119.94
Aquatics Membership	4%			171.00	171.00	342.00	342.00	342.00	342.00	342.00	342.00
Nurse Case Mngt	4%			1,080.00	1,080.00	1,080.00	1,080.00	1,080.00	1,080.00	1,080.00	1,080.00
Driving Eval	4%									1,500.00	
Pain and Suffering				160,534.69							
Past Unreimbursable Expenses				1,630.00							
Medicaid Lien				54,681.55							
Annual Totals				258,162.26	20,792.55	20,963.55	5,498.75	5,489.15	5,724.65	6,924.65	5,044.65

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to the guardian(s)/conservator(s) of the estate of Tysheem Hargrove, Jr., for Yr 1 life care expenses (\$41,316.02) and pain and suffering (\$160,534.69): \$201,850.71.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioners, Felicia Wise and Tysheem Hargrove, Sr., for past un-reimbursable expenses: \$1,630.00.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and the Commonwealth of Pennsylvania, for reimbursement of the Commonwealth's Medicaid lien: \$54,681.55.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at the rates indicated in column "G.R." above, compounded annually from the date of judgment.

Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

At respondent's discretion, items denoted with an "M" payable in twelve monthly installments totaling the annual amount indicated.



## Appendix A: Items of Compensation for Tysheem Hargrove, Jr.

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Years 9-10 2020-2021	Compensation Year 11 2022	Compensation Years 12-13 2023-2024	Compensation Year 14 2025	Compensation Year 15 2026	Compensation Year 16 2027	Compensation Years 17-18 2028-2029	Compensation Year 19 2030
Fleets Enema	4%			47.88	47.88	47.88	47.88	47.88	47.88	47.88	47.88
Miralax	4%			119.94	119.94	119.94	119.94	119.94	119.94	119.94	119.94
Aquatics Membership	4%			513.00	513.00	513.00	684.00	684.00	684.00	684.00	684.00
Nurse Case Mngt	4%			540.00	540.00	540.00	540.00	540.00	540.00	540.00	540.00
Driving Eval	4%										
Pain and Suffering											
Past Unreimbursable Expenses											
Medicaid Lien											
Annual Totals				4,615.65	4,925.65	4,615.65	4,786.65	4,776.65	7,624.71	4,770.68	6,419.68

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to the guardian(s)/conservator(s) of the estate of Tysheem Hargrove, Jr., for Yr 1 life care expenses (\$41,316.02) and pain and suffering (\$160,534.69): \$201,850.71.

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## Appendix A: Items of Compensation for Tysheem Hargrove, Jr.

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 20 2031	Compensation Years 21-54 2032-2065	Compensation Year 55 2066	Compensation Year 56 2067	Compensation Years 57-61 2068-2072	Compensation Years 62-Life 2073-Life
Fleets Enema	4%			47.88	47.88	47.88	47.88	47.88	47.88
Miralax	4%			119.94	119.94	119.94	119.94	119.94	119.94
Aquatics Membership	4%			684.00	684.00				
Nurse Case Mngt	4%			540.00					
Driving Eval	4%								
Pain and Suffering									
Past Unreimbursable Expenses									
Medicaid Lien									
Annual Totals				7,860.48	5,760.48	11,749.41	12,251.02	12,000.22	11,600.22

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to the guardian(s)/conservator(s) of the estate of Tysheem Hargrove, Jr., for Yr 1 life care expenses (\$41,316.02) and pain and suffering (\$160,534.69): \$201,850.71.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioners, Felicia Wise and Tysheem Hargrove, Sr., for past un-reimbursable expenses: \$1,630.00.

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