

to the influenza vaccination.” Id. The following are the factors respondent noted: “there was no antecedent illness or other discernible alternative cause, the diagnosis of GBS is medically sound, and the timing and onset of symptoms fall within a feasible time frame for association.” Id. Thus, based on these factors and the specific facts of this case, respondent chose not to contest entitlement in this case. Id.

This matter then entered the damages phase. The parties engaged their respective life care planners for the purpose of ascertaining petitioner’s long-term vaccine-related needs and prepared their respective life care plans. On January 18, 2007, respondent filed his Proffer on Award of Compensation, including **Items of Compensation for John A. Doe** (Tab A). On January 31, 2007 petitioners’ counsel, via telephone, acceded to the Secretary’s proffer. The case is now ripe for decision.

After a complete review of the record, the court finds that petitioner, John A. Doe, is entitled to an award under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 et seq., as reflected in Respondent’s Proffer on Award of Compensation and the attached chart, **Tab A: Items of Compensation for John A. Doe**. The court is convinced, based upon its experience and information in the record, that this award shall provide reasonable compensation to cover John A. Doe’s vaccine-related expenses.

Form of Compensation Award

1. **Growth Rate:**

As indicated in Tab A, the appropriate growth rate for non-medical life care items is 4% and the appropriate growth rate for medical life care items is 5%, compounded annually from the date of judgment.

2. **Lump Sum:**

A lump sum payment in the amount of **\$403,960.43**, representing compensation for pain and suffering (\$245,811.18), life care expenses for the first year (\$132,594.44), and past unreimbursed medical expenses (\$25,554.81) shall be payable in the form of a check to John A. Doe.

A lump sum payment in the amount of **\$17,152.24**, representing compensation for satisfaction of the State of Texas Medicaid lien, payable jointly to petitioner and

Texas Dept. of Aging & Disability Services
701 W. 51st Street
P.O. Box 149030
Austin, TX 78714-9030
Attn: Gayle Sandoval

Petitioner agrees to endorse this payment to the State.

3. **Annuity:**

Section 15(f)(4) requires that payment of compensation be based on the net present value of the elements of compensation. One way of discounting to net present value is to use the cost of an annuity to provide periodic payments to meet projected needs of a petitioner for the remainder of his life. Special masters are specifically empowered by §15(f)(4) of the Act to order that the compensation awarded under the Program be used to purchase an annuity. The court considers it in John A. Doe's best interest to order that the compensation for life care items awarded beyond year one post-judgment be paid in the form of an annuity, which annuity shall be purchased as soon as practicable after entry of judgment.

The court awards an amount sufficient to purchase an annuity contract(s), 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 from which the annuity(ities) will be purchased. 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(ities), which annuity(ities) shall make payments directly to John A. Doe only so long as John A. Doe is alive at the time a particular payment is due, for all items of care set forth in the attached chart.

At the Secretary's sole discretion, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth in the attached chart describe only the total yearly sum to be paid to the trustee and do not require that the payment be made in one annual installment.

The annuity company must meet the following criteria:²

- 1) has a minimum of \$250,000,000 of capital and surplus, exclusive of any mandatory security valuation reserve; and
- 2) has one of the following ratings from two of the following rating organizations:
 - a) A.M. Best Company: A+, A+g, A+p, A+r or A+s;
 - b) Moody's Investors Service Claims Paying Rating: Aa3, Aa2, Aa1 or Aaa;
 - c) Standard and Poor's Corporation Insurer Claims-Paying Ability Rating:

²These criteria are taken from the December 1990 draft of the Uniform Periodic Payment of Judgments Act.

AA-, AA, AA+ or AAA;

- d) Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+ or AAA.

4. **Life Contingent Annuity:**

A finding on life expectancy is unnecessary because this annuity will be a lifetime annuity. Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as John A. Doe is alive at the time that a particular payment is due. Representatives of the estate of John A. Doe shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of John A. Doe's death.

CONCLUSION

Petitioner, John A. Doe, is entitled to an award under the Vaccine Program to provide for compensable expenses as stated in the attached chart. Petitioner's award of compensation shall be in the form of an annuity as provided for in paragraph 3 above, together with the following lump sum payments:

1. A lump sum payment in the amount of \$403,960.43, representing compensation for pain and suffering (\$245,811.18), life care expenses for the first year (\$132,594.44), and past unreimbursed medical expenses (\$25,554.81) shall be payable in the form of a check to John A. Doe;
2. A lump sum payment in the amount of \$17,152.24, representing compensation for satisfaction of the State of Texas Medicaid lien, payable jointly to petitioner and Texas Dept. of Aging & Disability Services.

Based on the foregoing, this Court adopts the parties' Proffer and finds that petitioner is entitled to compensation in the amount and on the terms set forth therein. The Clerk of the Court is directed to enter judgment according to this decision.³

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

³Pursuant 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.