

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 01-277V
Filed: April 2, 2008

NOT TO BE PUBLISHED

ROBERT F. PAGE, and BARBARA A. *
PAGE, as Parents and Natural Guardians of *
EMILY DENILLE PAGE, a minor, *

Petitioners, *

v. *

Proffer on Award of Compensation

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Ronald L. Rosenfield, Cleveland, OH, for petitioners

Linda S. Renzi, U.S. Department of Justice, Washington, D.C., for respondent

DECISION¹

GOLKIEWICZ, Chief Special Master.

This is an action seeking an award under the National Childhood Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 et seq., on account of an injury to the petitioners' daughter, Emily Denille Page. On January 25, 2005, respondent filed a Supplemental Rule 4 Report agreeing that petitioners were entitled to an award of compensation in this case.

¹ 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 that (1) that is a trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and 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.

The petitioners engaged life care planner Linda Gartman, RN, CRRN, CCM, CLCP, LNC-C, and respondent engages life care planner Laura Fox, MSN, RN, CLCP, to provide an estimation of Emily D. Page's future vaccine -injury related needs. After a damages hearing on November 14, 2007, and discussions between the parties, on March 19, 2008, respondent filed Respondent's Proffer on Award of Compensation. On March 31, 2008, petitioners' counsel, Ronald L. Rosenfield, represented telephonically to the undersigned's office that petitioners accept the Proffer as a reasonable measure of the award in this case.

After a complete review of the record, the court finds that petitioners are entitled to compensation under the National Injury Compensation Program, 42 U.S.C. §300aa-10 et seq., as reflected in respondent's Proffer on Award of Compensation and the attached *Appendix A: Items of Compensation for Emily D. Page*, attached hereto. The court is convinced, based on its experience and information in the record, that this award shall provide reasonable compensation to cover Emily D. Page's vaccine-related expenses.

Form of Compensation Award

1. Lump Sum:

A lump sum payment of **\$313, 668.11**, representing trust fund seeds consisting of the present year cost of compensation for residential care expenses expected to be incurred in Compensation Years 2026 and 2027 (\$136, 875.00) and life care expenses expected to be incurred during the first year after judgment (\$176,793.11), in the form of a check payable to PeoplesBank, a Codorus Valley Company, as Trustee for the benefit of Emily D. Page, as set forth in Appendix A: Items of Compensation for Emily D. Page.

A lump sum of **\$825,878.80**, representing compensation for lost future earnings (\$619, 403.22), and pain and suffering (\$206, 475.58), in the form of a check payable to Thomas H. Hisrich, as court-appointed guardian of the estate of Emily D. Page for the benefit of Emily D. Page.

A lump sum payment of **\$1, 866.00**, representing compensation for past unreimbursable expenses, payable to Robert F. Page and Barbara A. Page, petitioners.

A lump sum payment of **\$234, 186.71**, representing compensation for the reimbursement of the Ohio State Medicaid lien, payable jointly to petitioners, Robert F. Page and Barbara A. Page, and

Ohio Job & Family Services
The Ohio Tort Recovery Unit
65 East State Street
Suite #1530
Columbus, OH 43215
Attn: Teana Jordan

2. 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 her life.² 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 Emily D. Page's best interest to order that the compensation for life care items be awarded beyond one year 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, subject to the conditions described in the following footnote, that will provide payment for the life care items contained in the life care plan, reflected by the attached chart Appendix A, paid to the life insurance company from which the annuity will be purchased.³ 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 the PeoplesBank, a Codorus Valley Company, as Trustee for the benefit of Emily D. Page, for all items of care set forth in Appendix A: Items of Compensation for Emily D. Page.

At the Secretary's sole discretion, the periodic payments may be provided to the PeoplesBank, a Codorus Valley Company, as Trustee for the benefit of Emily D. Page in monthly, quarterly, annual or other installments. The "annual amounts", with the rate reflected in the attached chart, describe only the total yearly sum to be paid to the PeoplesBank, a Codorus

²The personal representative of the estate of Emily D. Page shall provide written notice to respondent within twenty days of his death.

³The annuity company must meet the following criteria, adapted from the Proffer; these criteria appear to be taken from the December 1990 draft of the Uniform Periodic Payment of Judgments Act.

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

Valley Company, as Trustee for the benefit of Emily D. Page and do not require that the payment be made in one annual installment.

CONCLUSION

Petitioners are entitled to an award under the Vaccine Program to provide for compensable expenses as reflected in the attached Appendix A. Petitioners' award of compensation shall be in the form of the lump sum payments provided for in the section titled 1. Lump Sum above, together with an annuity as provided for in the section titled 2. Annuity above.

Based on the foregoing, this Court adopts the parties' Proffer and finds that petitioners are 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.⁴

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

⁴ 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 U.S. Court of Federal Claims Judge.

Appendix A: Items of Compensation for Emily D. Page

ITEMS OF COMPENSATION	G.R.	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	Compensation Year 9
Dental Sedation	5%	165.00	165.00	165.00	165.00	165.00	165.00	165.00	165.00	165.00
MRI	5%	1,350.00	270.00	270.00	270.00	270.00	270.00	270.00	270.00	270.00
Urinalysis, Bld Work, X-rays	5%	475.00	475.00	475.00	475.00	475.00	475.00	475.00	475.00	475.00
EEG	5%	550.00	55.00	55.00	55.00	55.00	55.00	55.00	55.00	55.00
Van Mods	4%	13,909.76								
Maint. For Van	4%	170.00	170.00	170.00	170.00	170.00	170.00	170.00	170.00	170.00
Home Mod Allowance	0%	75,000.00								
YMCA	4%	179.14	152.64	152.64	152.64	152.64	152.64	152.64	152.64	152.64
Aquatic Equip	4%	100.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00
Therapy Mat	4%	340.00	48.57	48.57	48.57	48.57	48.57	48.57	48.57	48.57
Sensory Dev. & Therapy Ball	4%	350.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00
Meds: Trithexiphenidyl/ Trileptal/ Clonazepam	5%	5,327.64	5,327.64	5,327.64	5,327.64	5,327.64	5,327.64	5,327.64	5,327.64	5,327.64
Miralax	5%	348.00	348.00	348.00	348.00	348.00	348.00	348.00	348.00	348.00
Diapers	4%	3,729.24	3,729.24	3,729.24	3,729.24	3,729.24	3,729.24	3,729.24	3,729.24	3,729.24
Lost Future Earnings		619,403.22								
Pain and Suffering		206,475.58								
Past Un-reimbursable Expenses		1,866.00								
Medicaid Lien		234,186.71								
Annual Totals		1,375,599.62	67,527.42	68,025.25	66,725.25	68,225.25	67,943.25	66,875.25	68,075.25	97,358.24

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 PEOPLESBANK, as Trustee for the benefit of Emily D. Page, for Trust seed funds (\$136,875.00) and Yr 1 life care expenses (\$176,793.11): \$313,668.11.
 As soon as practicable after entry of judgment, respondent shall make the following payment to Thomas H. Hirsch, as court-appointed guardian of the estate of Emily D. Page for the benefit of Emily D. Page for lost future earnings (\$619,403.22) and pain and suffering (\$206,475.58): \$825,878.80.
 As soon as practicable after entry of judgment, respondent shall make the following payment to petitioners, Robert F. Page and Barbara A. Page, for past un-reimbursable expenses: \$1,866.00.
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioners and Ohio Job & Family Services, The Ohio Tort Recovery Unit, 65 East State Street, Capitol Square Office Tower, Suite # 1540, Columbus, OH 43215, Attn: Teana Jordan, as reimbursement of the state's Medicaid lien: \$234,186.71.
 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 OF COMPENSATION	G.R.	Compensation Year 10	Compensation Years 11	Compensation Year 12	Compensation Years 13-15	Compensation Year 16	Compensation Years 17-18	Compensation Years 19-20	Compensation Years 21-36	Compensation Years 37-Life
		2017	2018	2019	2020-2022	2023	2024-2025	2026-2027	2028-2043	2044-Life
Dental Sedation	5%	165.00	165.00	165.00	165.00	165.00	165.00	165.00	165.00	165.00
MRI	5%	270.00	270.00	270.00	270.00	270.00	270.00	270.00	270.00	270.00
Urinalysis, Bid Work, X-rays	5%	475.00	475.00	475.00	237.50	237.50	237.50	237.50	237.50	237.50
EEG	5%	55.00	55.00	55.00	55.00	55.00	55.00	55.00	55.00	55.00
Van Mods	4%		13,909.76							
Maint. For Van	4%	170.00	170.00	170.00	170.00	170.00	170.00			
Home Mod Allowance	0%									
YMCA	4%	152.64	152.64	152.64	152.64	152.64	152.64	152.64	152.64	152.64
Aquatic Equip	4%	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00
Therapy Mat	4%	48.57	48.57	48.57	48.57					
Sensory Dev. & Therapy Ball	4%	70.00	70.00	70.00	70.00	70.00				
Meds: Trithexphenidyl/ Trileptal/ Clonazepam	5%	5,327.64	5,327.64	5,327.64	5,327.64	5,327.64	5,327.64	5,327.64	5,327.64	5,327.64
Miralax	5%	348.00	348.00	348.00	348.00	348.00	348.00	348.00	348.00	348.00
Diapers	4%	3,729.24	3,729.24	3,729.24	3,729.24	3,729.24	3,729.24	3,729.24	3,729.24	3,729.24
Lost Future Earnings										
Pain and Suffering										
Past Un-reimbursable Expenses										
Medicaid Lien										
Annual Totals		97,055.90	110,847.31	96,937.55	96,700.05	97,719.48	96,468.48	16,012.85	84,450.35	84,070.35

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 PEOPLESBANK, as Trustee for the benefit of Emily D. Page, for Trust seed funds (\$136,875.00) and Yr 1 life care expenses (\$176,793.11): \$313,668.11.

As soon as practicable after entry of judgment, respondent shall make the following payment to Thomas H. Hisrich, as court-appointed guardian of the estate of Emily D. Page for the benefit of Emily D. Page for lost future earnings (\$619,403.22) and pain and suffering (\$206,475.58): \$825,878.80.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioners, Robert F. Page and Barbara A. Page, for past un-reimbursable expenses: \$1,866.00.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioners and Ohio Job & Family Services, The Ohio Tort Recovery Unit, 65 East State Street, Capitol Square Office Tower, Suite # 1540, Columbus, OH 43215, Attn: Teana Jordan, as reimbursement of the state's Medicaid lien: \$234,186.71.

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.