

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-0459V

Filed: December 21, 2010

(Not to be published¹)

Megan Harrison, by her parents,
KEVIN HARRISON and
MARCIA HARRISON,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

Proffer on Award of Damages

DECISION²

On September 17, 2009, respondent in this case filed a “Rule 4 report” acknowledging that petitioners, Kevin Harrison and Marcia Harrison, on behalf of their daughter, Megan Harrison, are entitled to an award in this case, pursuant to the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act”). 42 U.S.C. § 300aa-10 *et seq.* This case was transferred from Special Master Richard B. Abell to me on March 29, 2010. On December 15, 2010, respondent filed “Respondent’s Proffer on Award of Compensation,” with attached Tabs

¹ Because this document contains an explanation for my action in this case, I intend to post this document 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). Therefore, 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 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, this entire document will be available to the public. *Id.*

² This document constitutes my final “decision” in this case, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of this Court shall enter judgment in accord with this decision.

A - E. Petitioners' counsel, Michael McLaren, confirmed to my staff by telephone, on December 16, 2010, that petitioners accept the Proffer as a reasonable measure of the amount of the award appropriate in this case.

I have reviewed respondent's Proffer and Tabs A - E, and find that they define appropriate compensation in this case pursuant to 42 U.S.C. § 300aa-15(b). I conclude that compensation should be awarded based on those documents, and the record as a whole. (I have attached the Proffer and Tabs A - E to this Decision.) I order that respondent make lump sum payments, and also purchase an annuity contract, as described below.

1. Lump Sums

A. A lump sum in the amount of \$863,068.00 in the form of a check payable to petitioners, Kevin and Marcia Harrison, as the Conservators of the Estate of Megan Harrison.³ (\$554,032.00, representing compensation for past and future lost earnings; \$201,051.00, representing compensation for past and future pain and suffering; \$107,985.00, representing compensation for home modification expenses.)

B. A lump sum payment in the amount of \$12,666.90, representing past unreimbursed expenses, in the form of a check payable to petitioners, Kevin and Marcia Harrison.

C. A lump sum payment in the amount of \$508,587.00, representing various life care expenses, in the form of a check payable to Regions Bank as Trustee of the Megan Harrison U.S. Grantor Reversionary Trust.

D. A lump sum payment in the amount of \$45,155.73, representing reimbursement for a Georgia Medicaid Lien, shall be payable jointly to Kevin and Marcia Harrison and

Georgia Department of Community Health
Subrogation Unit
5600 New Northside Drive, Suite 750
Atlanta, Georgia 30328
(Attn: Kajuanda Wilcox, (678) 564-1163, ext. 142).

2. Annuity

I consider it in Megan Harrison's best interest that the compensation for certain 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. Accordingly, pursuant to 42 U.S.C. § 300aa-15(f)(4), I order respondent to purchase, and take ownership of, an annuity contract from an insurance company⁴ for the benefit of Megan, pursuant to which the insurance

³ The parties agree that within 90 days of the date of judgment, duly authorized Conservators of the Estate will be appointed for Megan Harrison under the laws of the State of Georgia.

⁴ 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.

company will agree to make periodic payments for the rest of Megan's life, commencing on the first anniversary of the date of judgment and terminating upon Megan's death. This annuity benefit is described at part II.G of the Proffer. The amount of the annuity payments in each year will be calculated based on Tab B, supplied by respondent, which I have attached to this Decision.

The annuity company must meet the following criteria:

- 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+, 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.

CONCLUSION

Petitioners, as legal representatives of Megan Harrison, are entitled to an award under the Vaccine Act to provide for compensation for Megan's injury. The award shall be partly in the form of an annuity, and partly in the form of lump sum payments, as provided above.

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in accord with this Decision.

IT IS SO ORDERED.

/s/ George L. Hastings, Jr
George L. Hastings, Jr.
Special Master