OFFICE OF SPECIAL MASTERS

No. 99-80V

(Filed: May 12, 2005)

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JOANNA WILLS,                                         *
                                                      *
                    Petitioner,                       *     NOT FOR PUBLICATION
                                                      *
          v.                                          *
                                                      *
SECRETARY OF HEALTH AND                               *
HUMAN SERVICES,                                       *
                                                      *
                    Respondent.                       *
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* * * * * * * * * * * * * * * * * * * * * * * * * * * *
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DECISION[1]

On February 26, 2004, I filed a Ruling concluding that petitioner is entitled to an award in this case, pursuant to the National Childhood Vaccine Injury Act of 1986, as amended ("the Act"). 42 U.S.C. § 300aa-10 et seq. On March 2, 2005, respondent filed a "Proffer on Award of Damages." During an unrecorded telephonic status conference conducted on March 30, 2005, petitioner's counsel, Ronald Homer represented that petitioner accepts that Proffer as a reasonable measure of the amount of the award appropriate in this case.

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[1] This document constitutes my "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.

Also, the petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Rule 18(b)(2) of the Vaccine Rules of this Court, this decision will be made available to the public unless petitioner files, within fourteen days, an objection to the disclosure of any material in this decision that would constitute "medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy."

I have reviewed respondent's Proffer, and find that it defines appropriate compensation in this case pursuant to 42 U.S.C. § 300aa-15(b). I hereby order that compensation be awarded based on the Proffer. I order that respondent make a lump sum payment and purchase on annuity contract as follows:

1. Lump sum

A lump sum payment in the amount of $1,144,983 shall be payable to the petitioner. This amount represents all compensation for past unreimbursable expenses, first-year future unreimbursable expenses, past and future "pain and suffering," and "lost earnings."

2. Annuity

I consider it in petitioner's best interest that the compensation for future unreimbursable expenses beyond the first year 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 company for the benefit of petitioner, pursuant to which the insurance company will agree to make periodic payments for the rest of petitioner's life, commencing on the first anniversary of the date of judgment. The amount of the annuity payments in each year will be calculated based on the Appendix A attached to respondent's Proffer, which I have attached to this Decision.

The annuity company must meet the following criteria:[2]

1) has a minimum of $100,000,000 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: AA-, AA, AA+ or AAA;

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

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

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

IT IS SO ORDERED.

George L. Hastings, Jr.
Special Master

(Attachment)