

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-408 V

Filed: April 7, 2011

Not for Publication

LORI BARILLARO,

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Petitioner,

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Damages Decision based on Proffer

v.

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SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

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Respondent.

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Clifford J. Shoemaker, Vienna, VA, for petitioner.

Althea W. Davis, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On April 6, 2011, Respondent filed a Proffer on Award of Compensation. On April 7, Petitioner communicated her acceptance of the Proffer. Based on the record as a whole, the special master finds that Petitioner is entitled to the award as stated in the Proffer. Pursuant to the terms stated in the attached Proffer, the court awards Petitioner:

¹ Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

- a. A lump sum payment of **\$918,493.62**, representing compensation for past and future lost earnings (\$459,333.00), pain and suffering (\$224,000.00), past unreimbursable expenses (\$6,057.92), and life care expenses for Year One (\$229,102.70). The award shall be in the form of a check payable to Petitioner.
- b. An amount sufficient to purchase an annuity contract, subject to the conditions contained in the Proffer.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: April 7, 2011

/s/ Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

LORI BARILLARO,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

No. 99-408V
Special Master Laura Millman

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

The respondent engaged life care planner Laura Fox, MSN, RN, CLCP, and petitioner engaged Terry Arnold, RN, to provide an estimation of petitioner’s future vaccine-injury related needs. For the purposes of this proffer, "vaccine-injury related needs" are defined in the special master's ruling on entitlement dated May 28, 2008, and include optic neuritis and multiple sclerosis only. All items of compensation identified in the life care plan are supported by the evidence and are illustrated by the chart entitled Appendix A: Items of Compensation for Lori Barillaro, attached hereto as Tab A.¹ Respondent proffers that petitioner should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Tab A. Petitioner agrees.

B. Lost Future Earnings

The parties agree that based upon the evidence of record, Lori Barillaro will never again be gainfully employed. Therefore, respondent proffers that Lori Barillaro should be awarded past and future lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A).

¹ The chart at Tab A illustrates the annual benefits provided by the life care plan. The annual benefit years run from the date of judgment up to the first anniversary of the date of judgment, and every year thereafter up to the anniversary of the date of judgment.

Respondent proffers that the appropriate award for Lori Barillaro's lost earnings is \$459,333.00. This amount reflects that the award for lost future earnings has been reduced to net present value. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Lori Barillaro should be awarded \$224,000.00 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). Petitioner agrees.

D. Past Unreimbursable Expenses

Evidence supplied by petitioner documents her expenditure of past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$6,057.92. Petitioner agrees.

E. Medicaid Lien

To the best of respondent's knowledge and upon on the representation of petitioner, petitioner has never received Medicaid benefits. Accordingly, there is no Medicaid lien.

II. Form of the Award

The parties recommend that the compensation provided to Lori Barillaro 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 for all compensation available under 42 U.S.C. § 300aa-15(a):

A. A lump sum payment of **\$918,493.62**, (representing compensation for past and future lost earnings (\$459,333.00), pain and suffering (\$224,000.00), past unreimbursable expenses (\$6,057.92), and life care expenses for Year One (\$229,102.70), in the form of a check payable to petitioner;

B. An amount sufficient to purchase an annuity contract,² subject to the conditions

² In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

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 company³ from which the annuity will be purchased.⁴ 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 Lori Barillaro, only so long as Mrs. Barillaro is alive at the time a particular payment is due. 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 chart at Tab A describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment.

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. Petitioner agrees.

³ 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.

⁴ Petitioner authorizes the disclosure of certain documents filed by the petitioner 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.

2. Life-contingent annuity

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as petitioner 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 Lori Barillaro's death.

III. Summary of Recommended Payments Following Judgment

- A. Lump sum paid to petitioner: **\$918,493.62**

- B. An amount sufficient to purchase the annuity contract described above in section II. B.

Respectfully submitted,

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Assistant Attorney General

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DATED: April 6, 2011