

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-834V

Filed: October 28, 2008

Not for publication

MAX RIDGWAY, a minor and by *
his natural guardian, LESLI RIDGWAY *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Damages decision based on a proffer;
significant aggravation of pre-existing
influenza A virus, causing encephalopathy
and sequelae

Mark L. Krueger, Baraboo, WI, for petitioner.
Althea W. Davis, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

Petitioners, Lesli and Michael Ridgway, filed a petition on December 7, 2006, under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10 et seq., alleging that DPaT, HiB, inactivated polio, and Prevnar vaccines to Max Ridgway caused a Table encephalopathy. The undersigned issued a ruling on entitlement in favor of petitioners on July 23, 2008. On October 7, 2008, the undersigned granted a motion amend the caption, reflecting Lesli Ridgway as the

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.


sole petitioner in this case. On October 23, 2008, respondent filed a Proffer on Award of Compensation. On October 28, 2008, petitioner filed a notice accepting respondent's Proffer on Award of Compensation. Based upon the record as a whole, the special master finds that petitioner is entitled to an award as stated in the Proffer. Pursuant to the attached Proffer, with Appendix, the court awards petitioner:

1. A lump sum payment of \$141,723.14, representing trust seed funds consisting of the present year cost of compensation for facility care expenses in Compensation Year 2031 (\$91,250.00) and life care expenses in the first year after judgment (\$50,473.14), in the form of a check payable to PlainsCapital Bank, as Trustee of the Reversionary Trust established for the benefit of Max Ridgway, as set forth in Appendix A: Items of Compensation for Max Ridgway.
2. A lump sum payment of \$743,667.06 (representing compensation for lost future earnings (\$594,800.29) and pain and suffering (\$148,866.77)), in the form of a check payable to PlainsCapital Bank, as Trustee of the Max Walker Ridgway Trust, for the benefit of Max Ridgway;
3. A lump sum payment of \$34,094.85, representing compensation for past unreimbursable expenses, in the form of a check payable to Lesli Ridgway, petitioner;
4. An amount sufficient to purchase an annuity contract, subject to the conditions described in the attached Proffer, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab A of the Proffer, paid to the life insurance company identified at note 2, page 3 of the Proffer, from which the annuity will be purchased.

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

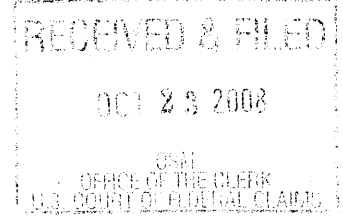
IT IS SO ORDERED.

Dated: Oct. 28, 2008


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



LESLE RIDGWAY, Individually and next friend
of MAX RIDGWAY, a minor,

Petitioner,

v.

SECRETARY OF
HEALTH AND HUMAN SERVICES,

Respondent.

No. 06-834V
Special Master 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 Rehabilitation Professional Consultants, Inc., to provide an estimation Max Ridgway's future vaccine-injury related needs. 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 Max Ridgway, attached hereto as Tab A.¹ Respondent proffers that Max Ridgway 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.

¹The 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.

B. Lost Future Earnings

The parties agree that based upon the evidence of record, Max Ridgway will never be gainfully employed. Therefore, respondent proffers that Max Ridgway should be awarded full lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(B). Respondent proffers that the appropriate award for Max Ridgway's lost future earnings is \$594,800.29. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Max Ridgway should be awarded \$148,866.77 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 Max Ridgway's vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$34,094.85. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no Medicaid liens outstanding against Max Ridgway.

II. Form of the Award

The parties recommend that the compensation provided to Max Ridgway 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:

- A. A lump sum payment of \$141,723.14, representing trust seed funds consisting of the present year cost of compensation for facility care expenses in Compensation

Year 2031 (\$91,250.00) and life care expenses in the first year after judgment (\$50,473.14), in the form of a check payable to PlainsCapital Bank, as Trustee of the Reversionary Trust established for the benefit of Max Ridgway, as set forth in Appendix A: Items of Compensation for Max Ridgway.

- B. A lump sum payment of \$743,667.06, representing compensation for lost future earnings (\$594,800.29) and pain and suffering (\$148,866.77), in the form of a check payable to PlainsCapital Bank, as Trustee of the Max Walker Ridgway Trust, for the benefit of Max Ridgway. No payment shall be made under this paragraph until petitioner provides respondent with a copy of the Court order creating the Max Walker Ridgway Trust, as well as a copy of the executed trust agreement.
- C. A lump sum payment of \$34,094.85, representing compensation for past unreimbursable expenses, in the form of a check payable to Lesli Ridgway, petitioner;
- D. An amount sufficient to purchase an annuity contract, 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 company² from which the annuity will be purchased. Compensation

² 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;
- (continued...)

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 PlainsCapital Bank, as Trustee of the Reversionary Trust for the benefit of Max Ridgway, only so long as Max Ridgway is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to the Trustee of the Reversionary Trust 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 the Trustee 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.

² (...continued)

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.

2. Life-contingent annuity

The Trustee of the Reversionary Trust will continue to receive the annuity payments from the Life Insurance Company only so long as Max Ridgway is alive at the time that a particular payment is due. Petitioner shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Max's death.

3. Guardianship

No payments under paragraph II. B. herein shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian of Max Ridgway's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian of the estate of Max Ridgway at the time a payment is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of Max Ridgway upon submission of written documentation of such appointment to the Secretary. Petitioner represents that as soon as practicable she will provide documentation establishing the Max Walker Ridgway Trust by order of a court of competent jurisdiction, as well as a copy of the executed trust agreement.

III. Summary of Recommended Payments Following Judgment

A.	Lump Sum paid to PlainsCapital Bank, as Trustee of the Reversionary Trust for the benefit of Max Ridgway:	\$ 141,723.14
B.	Lump Sum paid to PlainsCapital Bank, as Trustee of the Max Walker Ridgway Trust for lost future earnings and pain and suffering:	\$ 743,667.06
C.	Lump sum paid to petitioner:	\$ 34,094.85


- D. An amount sufficient to purchase the annuity contract described above in paragraph II. D.


Respectfully submitted,

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Dated: 23 October 2008

TAB A

Appendix A: Items of Compensation for Max Ridgway

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
Cochlear Implant: Drying Kit etc.	4%		2008	2009	2010	2011	2012	2013	2014	2015
Cochlear Implant: Test Device	4%		137.50	137.50	137.50	137.50	137.50	137.50	137.50	137.50
Cochlear Implant: Service Contract	4%		110.00			110.00			110.00	
Hearing Aid	4%	*	469.80		2,772.00		469.80		2,772.00	
Hearing Aid: Warranty	4%		225.00				225.00			
Hearing Aid: Batteries	4%		71.25	71.25	71.25	71.25	71.25	71.25	71.25	71.25
Hearing Aid: Cleaning/ Service	4%		175.00	175.00	175.00	175.00	175.00	175.00	175.00	175.00
Adaptive Equip.	4%									100.00
AFO's	4%	*	140.39	140.39	140.39	140.39	140.39	140.39	140.39	140.39
Lost Future Earnings			594,800.29							
Pain and Suffering			148,866.77							
Past Unreimbursable Expenses			34,094.85							
Annual Totals			919,485.05	46,887.47	52,631.27	52,409.27	50,582.54	52,631.27	50,009.27	52,932.32

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 PlainsCapital Bank, as Trustee of the Reversionary Trust for the benefit of Max Ridgway, for Trust seed funds (\$91,250.00) and Yr 1 life care expenses (\$50,473.14): \$141,723.14.

As soon as practicable after entry of judgment, respondent shall make the following payment to PlainsCapital Bank, as Trustee of the Max Walker Ridgway Trust, for the benefit of Max Ridgway, for lost future earnings (\$594,800.29) and pain and suffering (\$148,866.77): \$743,667.06.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner, Lesli Ridgway, as compensation for past unreimbursable expenses: \$34,094.85.

Annual amounts payable through annuity for future Compensation Years follow anniversary of the date of judgment. Annual amounts shall increase at rates indicated in Column G.R., compounded annually from the date of judgment. Items denoted with an asterisk (*) covered by health insurance and/or Medicare.

Appendix A: Items of Compensation for Max Ridgway

ITEMS OF COMPENSATION	G.R.	* Compensation Year 9	Compensation Year 10	Compensation Year 11	Compensation Year 12	Compensation Year 13	Compensation Year 14	Compensation Year 15	Compensation Year 16
Cochlear Implant: Drying Kit etc.	4%	2016 137.50	2017 137.50	2018 137.50	2019 137.50	2020 137.50	2021 137.50	2022 137.50	2023 137.50
Cochlear Implant: Test Device	4%		110.00			110.00			110.00
Cochlear Implant: Service Contract	4%	2,772.00			2,772.00			1,855.00	
Hearing Aid	4%	469.80				469.80			
Hearing Aid: Warranty	4%	225.00				225.00			
Hearing Aid: Batteries	4%	71.25	71.25	71.25	71.25	71.25	71.25	71.25	71.25
Hearing Aid: Cleaning/ Service	4%	175.00	175.00	175.00	175.00	175.00	175.00	175.00	175.00
Adaptive Equip.	4%	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
AFO's	4%	*	140.39		140.39				
Lost Future Earnings									
Pain and Suffering									
Past Unreimbursable Expenses									
Annual Totals		53,774.79	41,447.79	38,757.40	44,069.79	39,630.67	38,617.40	40,512.40	38,767.40

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 PlainsCapital Bank.
 as Trustee of the Reversionary Trust for the benefit of Max Ridgway, for Trust seed funds (\$91,250.00) and Yr 1 life care expenses (\$50,473.14): \$141,723.14.
 As soon as practicable after entry of judgment, respondent shall make the following payment to PlainsCapital Bank.
 as Trustee of the Max Walker Ridgway Trust, for the benefit of Max Ridgway, for lost future earnings (\$594,800.29)
 and pain and suffering (\$148,866.77): \$743,667.06.
 As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner,
 Lesli Ridgway, as compensation for past unreimbursable expenses: \$34,094.85.
 Annual amounts payable through annuity for future Compensation Years follow anniversary of the date of judgment.
 Annual amounts shall increase at rates indicated in Column G.R., compounded annually from the date of judgment.
 Items denoted with an asterisk (*) covered by health insurance and/or Medicare.

Appendix A: Items of Compensation for Max Ridgway

ITEMS OF COMPENSATION	G.R.	Compensation Year 17	Compensation Year 18	Compensation Year 19	Compensation Years 20-23	Compensation Year 24	Compensation Year 25	Compensation Years 26-28	Compensation Years 29-Life
	*	2024	2025	2026	2027-2030	2031	2032	2033-2035	2036-Life
Cochlear Implant: Drying Kit etc.	4%	137.50	137.50	137.50	137.50	137.50	137.50	137.50	137.50
Cochlear Implant: Test Device	4%			110.00	36.67	36.67	36.67	36.67	36.67
Cochlear Implant: Service Contract	4%		1,855.00	618.33	618.33	618.33	618.33	618.33	618.33
Hearing Aid	4%	469.80	117.45	117.45	117.45	117.45	117.45	117.45	117.45
Hearing Aid: Warranty	4%	225.00	56.25	56.25	56.25	56.25	56.25	56.25	56.25
Hearing Aid: Batteries	4%	71.25	71.25	71.25	71.25	71.25	71.25	71.25	71.25
Hearing Aid: Cleaning/ Service	4%	175.00	175.00	175.00	175.00	175.00	175.00	175.00	175.00
Adaptive Equip.	4%	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
AFO's	4%	140.39	28.08	28.08	28.08	28.08	28.08	28.08	28.08
Lost Future Earnings									
Pain and Suffering									
Past Unreimbursable Expenses									
Annual Totals		39,535.88	93,069.62	91,966.94	92,073.61	8,805.84	100,055.84	100,667.84	95,715.64

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 PlainsCapital Bank, as Trustee of the Reversionary Trust for the benefit of Max Ridgway, for Trust seed funds (\$91,250.00) and Yr 1 life care expenses (\$50,473.14): \$141,723.14.
 As soon as practicable after entry of judgment, respondent shall make the following payment to PlainsCapital Bank, as Trustee of the Max Walker Ridgway Trust, for the benefit of Max Ridgway, for lost future earnings (\$594,800.29) and pain and suffering (\$148,866.77): \$743,667.06.
 As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner, Lesli Ridgway, as compensation for past unreimbursable expenses: \$34,094.85.
 Annual amounts payable through annuity for future Compensation Years follow anniversary of the date of judgment. Annual amounts shall increase at rates indicated in Column G.R., compounded annually from the date of judgment. Items denoted with an asterisk (*) covered by health insurance and/or Medicare.