

# OFFICE OF SPECIAL MASTERS

(Filed: July 8, 2005)

CERISE ADAMS and WALTER ADAMS,	)	
as legal representatives of their daughter,	)	
KAYLA ADAMS,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 03-0263V
	)	DO NOT PUBLISH
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

## DECISION ON ENTITLEMENT AND DAMAGES<sup>1</sup>

Petitioners, Cerise Adams and Walter Adams (Ms. Adams and Mr. Adams or the Adamses), as legal representatives of their daughter, Kayla Adams (Kayla), seek compensation under the National Vaccine Injury Compensation Program (Program).<sup>2</sup> In a petition that they filed on February 5, 2003, the Adamses allege that Kayla suffered the onset of an encephalopathy within 72 hours after she received several vaccines--including diphtheria-pertussis-tetanus (DPT)--on February 21, 2000. Petition (Pet.) at 1. The Adamses maintain that Kayla exhibits now “severe and permanent psychomotor retardation.” *Id.*

Respondent asserts that the “record does not establish by a preponderance of the evidence that Kayla suffered” an injury listed on the Vaccine Injury Table (Table), 42 C.F.R. § 100.3(a),

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<sup>1</sup> 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, “the entire decision” will be available to the public. *Id.*

<sup>2</sup> The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

within the period provided in the Table, *id.*, following the administration of any of her February 21, 2000 vaccinations. Respondent's Report (Report) at 3. In addition, respondent asserts the "record does not establish by a preponderance of the evidence that Kayla suffered . . . an injury actually caused by" her February 21, 2000 vaccinations. *Id.* Rather, respondent asserts that the "evidence supports that Kayla suffered a metabolic encephalopathy, which is not a Table condition." *Id.* at 3-4. Nevertheless, "based on the specific facts of this case," respondent does not "contest entitlement." *Id.* at 4.

On July 5, 2005, respondent filed a proffer reflecting respondent's recommendation on damages in this case. *See* Respondent's Proffer on Award of Compensation (Proffer), filed July 5, 2005. The Adamses accede to respondent's Proffer. *See generally* Proffer. Based upon the record as a whole, the special master finds that the Proffer is reasonable and appropriate.<sup>3</sup>

### CONCLUSION

1. As provided in the Proffer, respondent shall pay as soon as practicable after entry of judgment \$223,520.00 in a lump sum to PeoplesBank, a Codorus Valley Company, as Trustee for the benefit of Kayla Adams. Proffer at 2-3, ¶ II(A). The purpose of the payment is to establish a Grantor Reversionary Trust for the benefit of Kayla Adams. *See* Proffer at 5, ¶ II(E)(4). The amount represents compensation for Kayla's partial life care expenses in the year following judgment; and for the current value of compensation for Certified Nursing Assistant and LPN services in Compensation Year 2021. Proffer at 2-3, ¶ II(A); *see also* § 300aa-15(a)(1)(A).
2. Respondent shall purchase, and take ownership of, as soon as practicable after entry of judgment a life-contingent annuity contract that will provide during Kayla's lifetime the amount reflected in the Proffer, Appendix A, for each year after the one-year anniversary of entry of judgment. Proffer at 4, ¶ II(E); *see also* § 300aa-15(a)(1)(A). Annuity payments for items of compensation designated by a "T" in Appendix A shall be payable to PeoplesBank, a Codorus Valley Company, as Trustee for the benefit of Kayla Adams. Proffer at 4, ¶ II(E). Annuity payments for all other items of compensation shall be payable directly to Cerise Adams and Walter Adams, as court-appointed guardians of the estate of Kayla Adams, for the benefit of Kayla Adams. *Id.* *As provided in the Proffer, the annuity contract*

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<sup>3</sup> By reference, the special master incorporates respondent's Proffer into this decision on entitlement and damages.

*shall provide for a 4% compounded annual growth rate for all non-medical life care items. Proffer at 5, ¶ II(E)(1). As provided in the Proffer, Appendix A, the annuity contract shall provide for a 5% compounded annual growth rate for all medical life care items. Id. As provided in the Proffer, Appendix A, the growth rate shall be applied and compounded beginning on the date of judgment. Id. The insurer from whom respondent shall purchase the annuity contract must meet two criteria:*

- a. The company must have a minimum of \$250,000,000.00 of capital and surplus, exclusive of any mandatory security valuation reserve; and
  - b. The company must have one of the following ratings from two of the following rating organizations:
    - (i) A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
    - (ii) Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1 or Aaa;
    - (iii) Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+ or AAA;
    - (iv) Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+ or AAA.
3. As provided in the Proffer, respondent shall pay as soon as practicable after entry of judgment \$13,952.16 in a lump sum to Cerise Adams and Walter Adams. The amount represents compensation for the Adamses' actual unreimbursable expenses before the date of judgment. Proffer at 3, ¶ II(C); *see also* § 300aa-15(a)(1)(B).
4. As provided in the Proffer, respondent shall pay as soon as practicable after entry of judgment \$820,119.60 in a lump sum to Cerise Adams and Walter Adams, as court-appointed guardians of the estate of Kayla Adams, for the benefit of Kayla Adams. The amount represents compensation for Kayla's partial life care expenses in the year following judgment, *see* § 300aa-15(a)(1)(A); for Kayla's lost future earnings, *see* § 300aa-15(a)(3)(B); and for Kayla's actual and

projected pain and suffering and emotional distress. *See* § 300aa-15(a)(4). Proffer at 3, ¶ II(B).

5. As provided in the Proffer, respondent shall pay as soon as practicable after entry of judgment \$4,539.63 in a lump sum *jointly* to Cerise Adams and Walter Adams, as court-appointed guardians of the estate of Kayla Adams, and to Illinois Department of Public Aid, 32 W. Randolph Street, Suite 1300, Chicago, Illinois 60601, ATTN: Anthony Graham. The amount represents compensation for satisfaction of the state's Medicaid lien. Proffer at 3, ¶ II(D).

In the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in the Adamses' favor in complete conformity with this decision.<sup>4</sup>

The clerk of court shall send the Adamses' copy of this decision to the Adamses by overnight express delivery.

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John F. Edwards  
Special Master

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<sup>4</sup> Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), the Adamses may expedite payment by filing an election to accept the judgment.