

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 01-556V

Filed: June 26, 2008

Not to be published.¹

SUSAN BERRY,

Petitioner,

v.

Vaccine Act; Proffer; Damages

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

DECISION²

This is an action seeking an award under the National Childhood Vaccine Injury Compensation Program (see 42 U.S.C. § 300aa-10 *et seq.*), on account of an injury to the petitioner, Susan Berry. On September 13, 2006, I issued an order determining that petitioner was entitled to compensation in this case.

After discussions between the parties, and the preparation of a joint life care plan, on June 23, 2008, respondent filed a document entitled “Respondent’s Recommendations on Damages.” On June 25, 2008, petitioner’s counsel represented telephonically to my staff that petitioner accepts the respondent’s Recommendations as a reasonable measure of the amount of the award in this case.

¹This document will not be sent to electronic publishers as a formally “published” opinion. However, because this document contains a reasoned 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, 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.* See also 42 U.S.C. § 300aa-12(d)(4)(B).

²In 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.

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

1. Lump sums

In the Recommendations document, the parties have agreed that the petitioner is entitled to immediate compensation totaling **\$ 682,078.00**, based on the following lump sums:

- A lump sum payment of \$ 263,371.00, representing life care expenses for the first year following judgment and portions of the second and third years following judgment (\$ 68,371.00) and compensation for past and projected pain and suffering (\$ 195,000.00);
- A lump sum payment of \$ 3,323.00, representing compensation for past unreimbursed expenses; and
- A lump sum in the amount of \$ 415,384.00, representing compensation for past and future lost earnings.

2. Annuity

The parties agree that the compensation for future unreimbursable expenses beyond the first year post-judgment be paid in the form of an annuity, which 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 Ms. Berry's benefit,³ pursuant to which the insurance company will agree to make periodic

³ The annuity contract shall be purchased from an insurance company that meets the following criteria, adapted from the Recommendations; these criteria appear to be based upon the December 1990 draft of the Uniform Periodic Payment of Judgments Act.

- 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;

payments to Ms. Berry for the rest of her 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 “Summary of Life Care Items” and “Settlement Funding Portfolio” documents attached to respondent’s Recommendations, which I have attached to this Decision.

/s/George L. Hastings, Jr.

George L. Hastings, Jr.
Special Master

(Attachments)

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

Pet. Susan Berry
D.O.B. 12/27/1954

DATE: 06/02/08
TIME: 01:05 PM

SUMMARY OF LIFE CARE ITEMS - Life Care Plan dated November 26, 2007

ITEM OF CARE	Medical Care	Medications	Equipment	Therapies	Home Care	Home Mods	TOTALS of Items with a 3.0% Growth Rate	TOTALS of Items with a 4.0% Growth Rate	TOTALS of Items with a 5.0% Growth Rate	TOTALS OF ALL ITEMS & APPLYING THE GROWTH RATES	
GROWTH RATE	5.0%	5.0%	4.0%	4.0%	4.0%	3.0%					
AGE	YEAR										
54	2008	1,986	120	1,191	432	8,675	55,000	55,000	10,298	2,106	67,404
55	2009	1,986	120	223	432	8,675	0	0	9,330	2,106	11,914
56	2010	1,986	120	898	72	8,675	0	0	9,645	2,106	12,754
57	2011	1,986	120	290	72	8,675	0	0	9,037	2,106	12,604
58	2012	1,986	120	290	72	8,675	0	0	9,037	2,106	13,132
59	2013	1,986	120	290	72	8,675	60,000	60,000	9,037	2,106	83,240
60	2014	1,986	120	290	72	16,050	0	0	16,412	2,106	23,589
61	2015	1,986	120	290	72	16,050	0	0	16,412	2,106	24,561
62	2016	1,986	120	290	72	16,050	0	0	16,412	2,106	25,573
63	2017	1,836	120	290	72	16,050	0	0	16,412	1,956	26,394
64	2018	1,836	120	290	72	16,050	0	0	16,412	1,956	27,480
65	2019	1,836	120	290	72	16,050	0	0	16,412	1,956	28,611
66	2020	1,836	120	290	72	16,050	0	0	16,412	1,956	29,789
67	2021	1,836	120	290	72	21,950	0	0	22,312	1,956	40,840
68	2022	1,836	120	290	72	21,950	0	0	22,312	1,956	42,510
69	2023	1,836	120	290	72	21,950	0	0	22,312	1,956	44,250
70	2024	1,836	120	290	72	21,950	0	0	22,312	1,956	46,060
71	2025	1,836	120	290	72	21,950	0	0	22,312	1,956	47,945
72	2026	1,836	120	290	72	21,950	0	0	22,312	1,956	49,908
73	2027	1,836	120	290	72	21,950	0	0	22,312	1,956	51,951
74	2028	1,836	120	290	72	21,950	0	0	22,312	1,956	54,079
75	2029	1,836	120	290	72	21,950	0	0	22,312	1,956	56,294
76	2030	1,836	120	290	0	21,950	0	0	22,240	1,956	58,429
77	2031	1,836	120	290	0	21,950	0	0	22,240	1,956	60,824
78	2032	1,836	120	290	0	21,950	0	0	22,240	1,956	63,317
79	2033	1,836	120	290	0	21,950	0	0	22,240	1,956	65,913
80	2034	1,836	120	290	0	21,950	0	0	22,240	1,956	68,615
81	2035	1,836	120	290	0	21,950	0	0	22,240	1,956	71,430
82	2036	1,836	120	290	0	21,950	0	0	22,240	1,956	74,360
		54,594	3,480	9,858	2,304	515,600	115,000	115,000	527,762	58,074	1,283,769
		7.79%	0.50%	1.41%	0.33%	73.57%	16.41%				

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SETTLEMENT FUNDING PORTFOLIO

LIFE CARE PLAN dated November 26, 2007

June 2, 2008

DATE: 06/02/08
TIME: 01:06 PM

Pet. Susan Berry
D.O.B. 12/27/1954

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Settlement Item	TOTAL	ANNUAL	CASH &	ANNUITY	ANNUITY	ANNUITY	ANNUITY	ANNUITY	ANNUAL	CUMULATIVE
Starting Amount	MEDICAL	STRUCTURED	ANNUITY	2,211	3,034	9,398	20,768	37,033	SAFETY	SAFETY
Inflation Factor	CARE NEEDS	SETTLEMENT	LUMP SUMS	5.00%	5.00%	4.00%	4.00%	4.00%	MARGIN	MARGIN
Beginning Year	2008	BENEFITS		2009	2017	2009	2014	2021	2008	2008
Ending Year	2036			2016	LIFE	2013	2020	LIFE	2036	2036

AGE	YEAR	TOTAL NEEDS	S/S TOTAL	Cash & Lump Sums	Deferred Ann'l Annuity	Deferred Ann'l Annuity	Deferred Ann'l Annuity	Deferred Ann'l Annuity	Deferred Ann'l Annuity	Safety Margin	Cum.Safety Margin
54	2008	67,404	68,371	68,371						967	967
55	2009	11,914	11,609		2,211		9,398			-305	662
56	2010	12,754	12,095		2,322		9,774			-658	4
57	2011	12,604	12,603		2,438		10,165			-1	3
58	2012	13,132	13,131		2,560		10,571			-1	2
59	2013	83,240	83,242	69,560	2,687		10,994			2	4
60	2014	23,589	23,590		2,822			20,768		1	5
61	2015	24,561	24,562		2,963			21,599		1	6
62	2016	25,573	25,574		3,111			22,463		1	7
63	2017	26,394	26,395			3,034		23,361		1	8
64	2018	27,480	27,481			3,186		24,296		1	9
65	2019	28,611	28,612			3,345		25,267		1	10
66	2020	29,789	29,790			3,512		26,278		1	11
67	2021	40,840	41,970	1,249		3,688			37,033	1,130	1,141
68	2022	42,510	42,387			3,872			38,514	-124	1,017
69	2023	44,250	44,121			4,066			40,055	-129	888
70	2024	46,060	45,926			4,269			41,657	-134	754
71	2025	47,945	47,806			4,483			43,323	-139	615
72	2026	49,908	49,763			4,707			45,056	-145	470
73	2027	51,951	51,801			4,942			46,859	-151	319
74	2028	54,079	53,922			5,189			48,733	-157	163
75	2029	56,294	56,131			5,449			50,682	-163	0
76	2030	58,429	58,431			5,721			52,710	1	1
77	2031	60,824	60,825			6,007			54,818	1	2
78	2032	63,317	63,318			6,307			57,011	1	3
79	2033	65,913	65,914			6,623			59,291	1	4
80	2034	68,615	68,617			6,954			61,663	1	5
81	2035	71,430	71,431			7,302			64,129	1	7
82	2036	74,360	74,361			7,667			66,694	1	8
ITEMIZED TOTALS		1,283,769	1,283,777	139,180	21,113	100,322	50,903	164,032	808,228	8	8
		0.00%		139,180	21,113	38,161	50,903	164,032	444,622	858,011	Guar.Yield
		SAFETY MARGIN		139,180	21,113	100,322	50,903	164,032	808,228	1,283,777	Exp. Yield
						GY 10 Yrs			GY 10 Yrs		

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