

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 11-173V

Filed: September 11, 2012

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THERESA JENEROU,	)	
	)	NOT TO BE PUBLISHED
Petitioner,	)	
	)	Proffer; Damages; Influenza
v.	)	Vaccine; Complex Regional Pain
	)	Syndrome; Chronic Pain
SECRETARY OF	)	Syndrome; Corticosteroid
HEALTH AND HUMAN SERVICES,	)	Injection
	)	
Respondent.	)	
_____	)	

Gil L. Daley, II, Law Office of Gil L. Daley, II, P.C., Fort Worth, TX, for Petitioner.  
Ann D. Martin, United States Department of Justice, Washington, D.C., for Respondent.

### DECISION<sup>1</sup>

LORD, Special Master.

On March 11, 2011, Theresa Jenerou (“Petitioner”) filed a Petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10-34. Petitioner alleged that she suffered from complex regional pain syndrome and chronic pain syndrome as a result of receiving an influenza immunization on October 15, 2009. On June 6, 2011, Respondent filed the Rule 4(c) Report concluding that Petitioner’s claim is compensable under the Act. Following her influenza vaccination, Petitioner experienced pain in her right arm and was administered corticosteroids. Respondent stated that the facts of this case support a finding that Petitioner suffered from an off-Table injury that resulted from the corticosteroid injection.

On June 21, 2011, the undersigned found Petitioner entitled to compensation. Ruling on Entitlement, ECF No. 18. On August 29, 2012, Respondent filed a Joint Life Care Plan. On September 7, 2012, Respondent filed a Proffer on Award of Compensation (“Proffer”). Proffer, ECF No. 31 (attached hereto as Appendix A). Petitioner’s acceptance is set forth within the Proffer. Id.

<sup>1</sup> In accordance with Vaccine Rule 18(b), a petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Rules of the United States Court of Federal Claims (“RCFC”), Appendix B, Vaccine Rule 18(b). Redactions ordered by the special master, if any, appear in the document as posted on the United States Court of Federal Claims’ website.

After a review of the record as a whole, I find the Proffer reasonable and that Petitioner is entitled to an award as detailed in the Proffer and its Appendix A chart. The Court is convinced, based on its experience and the information in the record, that this award shall provide reasonable compensation to cover Petitioner's vaccine-related expenses.

## **I. FORM OF THE AWARD**

As stated in the Proffer, "[t]he parties recommend that the compensation provided to Theresa Jenerou should be made through a combination of lump sum payments and future annuity payments as described [in the Proffer], and request that the special master's decision and the Court's judgment award" compensation as set out in the Proffer. Proffer at 2.

### **A. Lump sum**

The Court awards a lump sum payment of \$597,236.00, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$74,911.00), lost earnings (\$354,024.00), pain and suffering (\$160,991.00), past unreimbursable expenses (\$7,310.00), in the form of a check payable to Petitioner, Theresa Jenerou.

### **B. Annuity**

The Court awards an amount sufficient to purchase an annuity contract, subject to the conditions described in the Proffer, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Appendix A of the Proffer, paid to the life insurance company from which the annuity will be purchased. 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 Petitioner, Theresa Jenerou, only so long as Theresa Jenerou 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 Appendix 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.

## **II. CONCLUSION**

The undersigned recognizes the good efforts of all involved in this matter. Based on the foregoing, the Court hereby **ADOPTS** Respondent's Proffer in its entirety, attached hereto as Appendix A, and awards compensation in the amount and upon the terms set forth therein. **Specifically, Petitioner is awarded:**

- a. a lump sum payment of \$597,236.00 in the form of a check payable to Petitioner, Theresa Jenerou; and**

**b. an amount sufficient to purchase an annuity contract described in section II. B. of Respondent's Proffer on Award of Compensation.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

s/ Dee Lord  
Dee Lord  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

THERESA JENEROU,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 11-173V
	)	Special Master Lord
	)	ECF
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

**I. Items of Compensation**

A. Life Care Items

The parties jointly engaged life care planner Linda J. Curtis RN, MS, CCM, CNLCP, to provide an estimation of Theresa Jenerou’s future vaccine-injury related needs. For the purposes of this proffer, the term “vaccine-related” is as described in Respondent’s Rule 4(c) Report filed on June 6, 2011, and the Special Master’s Ruling on Entitlement dated June 21, 2011. All items of compensation identified in the joint life care plan, filed on August 29, 2012, as Respondent’s Exhibit A, are supported by the evidence, and are illustrated by the chart entitled Appendix A: Summary of Life Care Items – Joint Life Care Plan dated July 11, 2012, attached hereto as Appendix A.<sup>1</sup> Respondent proffers that Theresa Jenerou should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Appendix A. Petitioner agrees.

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<sup>1</sup> The chart at Appendix 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 Earnings

The parties agree that based upon the evidence of record, Theresa Jenerou will never be gainfully employed. Therefore, respondent proffers that Theresa Jenerou should be awarded full lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Respondent proffers that the appropriate award for Theresa Jenerou's lost past and future earnings is \$354,024.00. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Theresa Jenerou should be awarded \$160,991.00 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 Theresa Jenerou's 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 \$7,310.00. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no outstanding Medicaid liens against her.

**II. Form of the Award**

The parties recommend that the compensation provided to Theresa Jenerou 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 \$597,236.00, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$74,911.00), lost earnings (\$354,024.00), pain and suffering (\$160,991.00), and past unreimbursable expenses (\$7,310.00), in the form of a check payable to petitioner, Theresa Jenerou.

B. An amount sufficient to purchase an annuity contract,<sup>2</sup> 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 Appendix A attached hereto, paid to the life insurance company<sup>3</sup> from which the annuity will be purchased.<sup>4</sup> 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 petitioner, Theresa Jenerou, only so long as Theresa Jenerou 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 Appendix 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.

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

<sup>3</sup> 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.

<sup>4</sup> 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.

1. Growth Rate

Respondent proffers that a four percent (4%) growth rate should be applied to all non-medical life care items, and a six percent (6%) growth rate should be applied to all medical life care items. Thus, the benefits illustrated in the chart at Appendix 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 six percent (6%) compounded annually from the date of judgment for medical items. Petitioner agrees.

2. Life-contingent annuity

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as she, Theresa Jenerou, 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 Theresa Jenerou's death.

3. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

**III. Summary of Recommended Payments Following Judgment**

- A. Lump Sum paid to petitioner, Theresa Jenerou: **\$597,236.00**
- B. An amount sufficient to purchase the annuity contract described above in section II. B.

Respectfully submitted,

STUART F. DELERY  
Acting Assistant Attorney General

RUPA BHATTACHARYYA  
Director  
Torts Branch, Civil Division

VINCENT J. MATANOSKI  
Acting Deputy Director  
Torts Branch, Civil Division

MICHAEL P. MILMOE  
Senior Trial Counsel  
Torts Branch, Civil Division

s/Ann D. Martin  
ANN D. MARTIN  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Tel.: (202) 307-1815

Dated: September 7, 2012



# APPENDIX A

Pet. Theresa Jenerou  
D.O.B. 02/25/1973

DATE: 08/28/12  
TIME: 03:54 PM

## SUMMARY OF LIFE CARE ITEMS - JOINT LIFE CARE PLAN dated July 11, 2012

ITEM OF CARE	Insurance	Ancillary Services	Supplies & Equipment	Home Services	Home Mods	TOTALS of Items with a 6.0% Growth Rate	TOTALS of Items with a 4.0% Growth Rate	TOTALS OF 4.0% & 6.0% ITEMS & APPLYING THE GROWTH RATE	
GROWTH RATE	6.0%	4.0%	4.0%	4.0%	0.0%				
AGE	YEAR								
39	2012	6,631.88	2,450.98	1,563.29	48,172.00	16,092.36	6,632	68,279	74,911
40	2013	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	58,425
41	2014	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	60,903
42	2015	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	63,488
43	2016	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	66,186
44	2017	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	69,001
45	2018	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	71,938
46	2019	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	75,004
47	2020	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	78,203
48	2021	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	81,543
49	2022	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	85,029
50	2023	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	88,667
51	2024	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	92,466
52	2025	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	96,431
53	2026	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	100,572
54	2027	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	104,894
55	2028	6,631.88	1,440.70	108.16	47,870.00	0.00	6,632	49,419	109,408
56	2029	6,631.88	1,440.70	108.16	61,010.00	0.00	6,632	62,559	139,717
57	2030	6,631.88	1,440.70	108.16	61,010.00	0.00	6,632	62,559	145,662
58	2031	6,631.88	1,440.70	108.16	61,010.00	0.00	6,632	62,559	151,867
59	2032	6,631.88	1,440.70	108.16	61,010.00	0.00	6,632	62,559	158,343
60	2033	6,631.88	1,440.70	108.16	61,010.00	0.00	6,632	62,559	165,103
61	2034	6,631.88	1,440.70	108.16	61,010.00	0.00	6,632	62,559	172,158
62	2035	6,631.88	1,440.70	108.16	61,010.00	0.00	6,632	62,559	179,522
63	2036	6,631.88	1,440.70	108.16	61,010.00	0.00	6,632	62,559	187,209
64	2037	6,631.88	1,440.70	108.16	61,010.00	0.00	6,632	62,559	195,235
65	2038	9,101.17	1,440.70	651.49	61,010.00	0.00	9,101	63,102	216,354
66	2039	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	262,109
67	2040	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	273,471
68	2041	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	285,340
69	2042	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	297,740
70	2043	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	310,695
71	2044	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	324,231
72	2045	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	338,375
73	2046	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	353,155
74	2047	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	368,601
75	2048	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	384,744
76	2049	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	401,617
77	2050	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	419,254
78	2051	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	437,690
79	2052	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	456,964
80	2053	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	477,115
81	2054	9,101.17	1,440.70	91.49	74,150.00	0.00	9,101	75,682	498,184
		327,149	62,960	6,383	2,610,592	16,092	327,149	2,696,027	8,977,521
		10.82%	2.08%	0.21%	86.35%	0.53%			100.00%

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Jenerou Joint LC Plan Rev 5 08 28 12