

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**

No. 08-662V  
Filed: August 24, 2012  
Unpublished

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DREW MCLAUGHLIN,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Proffer of award; Tetanus-diphtheria  
vaccine, Td; Brachial neuritis

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*Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioner.*  
*Ann Donohue Martin, U.S. Department of Justice, Washington, D.C., for Respondent.*

**DECISION**<sup>1</sup>

**GOLKIEWICZ, Special Master.**

The Petition in this matter was filed on September 18, 2008. Petitioner alleged he suffered brachial neuritis as a result of a tetanus-diphtheria vaccination he received on September 22, 2005. P Amended Petition, filed Dec. 15, 2008. Following a Fact Ruling issued on January 21, 2010, respondent filed a Supplemental Rule 4(c) Report recommending entitlement to compensation. R Supplemental Rule 4(c) Report, filed Feb. 19, 2010. Respondent filed her Proffer on Award of Compensation on August 23, 2012 (“Proffer”). Petitioner’s acceptance is set forth within the Proffer.

After review of the record, the undersigned finds that petitioner is entitled to compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 et seq., as reflected in respondent’s Proffer and the attached Tab A, Items of Compensation. The

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<sup>1</sup> The undersigned intends to post this decision on the website for the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). **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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or 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. Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing.** Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.

court is convinced, based on its experience and information in the record, that this award shall provide reasonable compensation to cover petitioner's vaccine-related expenses.

### **Form of Compensation Award**

As stated in the Proffer, "the parties recommend that the compensation provided to [petitioner] should be made through a combination of lump sum payments and future annuity payments . . ." as described within the Proffer. Proffer at 2.

A. **Lump Sum:**

The court awards a lump sum payment of \$247,381.87, representing life care expenses for Year One (\$68,050.62), lost earnings (\$12,426.61), pain and suffering (\$166,570.79), and past unreimbursable expenses (\$333.85) in the form of a check payable to petitioner.

B. **Annuity:**

Section 15(f)(4) requires that payment of compensation be based on the net present value of the elements of compensation. One way of discounting to net present value is to use the cost of an annuity to provide periodic payments to meet projected needs of a petitioner for the remainder of his life. Special masters are specifically empowered by § 15(f)(4) of the Act to order that the compensation awarded under the Program be used to purchase an annuity. The court considers it in petitioner's best interest to order that the compensation for life care items be awarded beyond one year post-judgment be paid in the form of an annuity, which annuity shall be purchased as soon as practicable after entry of judgment.

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, reflected by the attached Tab A for petitioner, paid to the life insurance company<sup>2</sup> 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 in annual or other installments. The "annual amounts" set forth in the chart at Tab A describe the total yearly sum to be paid to petitioner and do not require that the payment be made in one single annual installment. Proffer at p. 3. The growth rates outlined in the Proffer, Proffer at p. 3-4, should be applied to the life care items. The petitioner will continue to receive the

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<sup>2</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 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;
- d) Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+ or AAA.

annuity payments from the Life Insurance Company only so long as he is alive at the time that a particular payment is due. Petitioner agrees to make arrangements to ensure that written notice is provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of petitioner's death.

## CONCLUSION

Petitioner is entitled to an award under the Vaccine Program to provide for compensable expenses. The undersigned takes this opportunity to recognize the good efforts of counsel. Based on the foregoing, this Court **ADOPTS** the parties' Proffer and Tab A and finds that petitioner is entitled to compensation in the amount and on the terms set forth therein. **Specifically, petitioner is awarded a lump sum of \$247,381.87 in the form of a check payable to petitioner; petitioner is also awarded an amount sufficient to purchase an annuity contract described in section II.B. of respondent's Proffer on Award of Compensation.**

The Clerk of the Court is directed to enter judgment accordingly.

**IT IS SO ORDERED.**<sup>3</sup>

s/ Gary J. Golkiewicz  
Gary J. Golkiewicz  
Special Master

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<sup>3</sup> This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision. 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.