

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

SUSAN LAWSON, Parent of, *
JULIA GRIMES, A minor, *

Petitioner, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 09-148V
Special Master Christian J. Moran

Filed: January 12, 2011

damages; decision based on
proffer, encephalitis, measles-
mumps-rubella-varicella vaccine

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioner;
Alexis B. Babcock, Esq., U.S. Department of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION AWARDING DAMAGES*

On May 10, 2009, Susan Lawson, as parent of her daughter Julia, filed a petition seeking
compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-1
et seq., alleging that Julia suffered encephalitis as a result of a measles-mumps-rubella-varicella
("MMR-V") vaccine administered on December 26, 2006. Respondent recommended that
compensation be awarded in this case. Resp't Rept., filed June 11, 2009, at 1. A June 29, 2009
order moved this case into the damages phase.

* Because this published decision contains a reasoned explanation for the special master's action
in this case, the special master intends to post it 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 clearly be an
unwarranted invasion of privacy. When such a decision or designated substantive order is filed,
petitioner has 14 days to identify and to move to delete such information before 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.

During this phase, the parties retained life care planners, who eventually resolved most issues regarding compensation. For the issue that remained disputed, a hearing was held on November 4, 2010. During this hearing, the parties reached a mutually acceptable resolution of this issue.

On January 7, 2011, respondent filed a Proffer on Award of Compensation, which petitioner agrees to. Based upon the record as a whole, the special master finds the proffer reasonable and that petitioner is entitled to an award as stated in the Proffer. Pursuant to the attached Proffer, Appendix A, the court awards petitioner:

1. **A lump sum payment of \$897,606.08, representing compensation for partial life care expenses expected to be incurred during the first year after judgment ((\$78,155.36), lost future earnings (\$599,000.95), and pain and suffering (\$220,449.77), in the form of a check payable to petitioner, as the court-appointed guardian/conservator of the estate of Julia Grimes, for the benefit of Julia Grimes. No payments shall be made until petitioner provides respondent with documentation establishing that she has been appointed as the guardian/conservator of Julia Grimes's estate;**
2. **A lump sum payment of \$473,300.00, representing trust seed funds consisting of the discounted present value of ABA Therapy expenses expected to be incurred during Compensation Year One (2011) through Compensation Year 21 (2031), in the form of a check payable to Regions Bank, as Trustee of the Grantor Reversionary Trust established for the benefit of Julia Grimes, as set forth in Appendix B: Items of Compensation for Julia Grimes. The Grantor Reversionary Trust established for the benefit of Julia Grimes shall terminate at the end of Compensation Year 21 (2031), the exhaustion of trust estate, or the death of Julia Grimes, whichever occurs first. No payment to the Grantor Reversionary Trust shall be made until petitioner provides respondent with documentation establishing that she has been appointed as the guardian/conservator of Julia Grimes's estate;**
3. **A lump sum payment of \$13,584.90, representing compensation for past unreimbursable expenses, payable to Susan Lawson, petitioner;**
4. **A lump sum payment of \$26,645.30, representing compensation for satisfaction of the State of Colorado Medicaid lien, payable jointly to petitioner and**

**Colorado Department of Healthcare Policy and Financing
Benefits Coordination Section
1570 Grant Street
Denver, CO 80203-1818
Attn: Ashley D'Rienzo**

Petitioner agrees to endorse this payment to the State of Colorado.

5. **An amount sufficient to purchase an annuity contract, subject to the conditions described in the attached proffer (attached as Appendix A), that will provide**

payments for the life care items contained in the life care plan, as illustrated by the chart (attached as Appendix B), 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 as guardian/conservator of the estate of Julia Grimes, for the benefit of Julia Grimes, only so long as Julia Grimes 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 (attached as Appendix B) describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment.

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.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

B. Lost Future Earnings

The parties agree that based upon the evidence of record, Julia Grimes will never be gainfully employed. Therefore, respondent proffers that Julia Grimes 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 Julia Grimes's lost future earnings is \$599,000.95.

Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Julia Grimes should be awarded \$220,449.77 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 Julia Grimes's vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$13,584.90. Petitioner agrees.

E. Medicaid Lien

Respondent proffers that Julia Grimes should be awarded funds to satisfy the State of Colorado Medicaid lien in the amount of \$26,645.20, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Colorado may have against any individual as a result of any Medicaid payments the State of Colorado has made to or on behalf of Julia Grimes from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about December 26, 2006, under Title XIX of the Social Security Act.

II. Form of the Award

The parties recommend that the compensation provided to Julia Grimes 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 \$897,606.08, representing compensation for partial life care expenses expected to be incurred during the first year after judgment (\$78,155.36), lost future earnings (\$599,000.95), and pain and suffering (\$220,449.77), in the form of a check payable to petitioner, as the court-appointed guardian/conservator of the estate of Julia Grimes, for the benefit of Julia Grimes. No payments shall be made until petitioner provides respondent with documentation establishing that she has been appointed as the guardian/conservator of Julia Grimes's estate;

B. A lump sum payment of \$473,300.00, representing trust seed funds consisting of the discounted present value of ABA Therapy expenses expected to be incurred during Compensation Year One (2011) through Compensation Year 21 (2031), in the form of a check payable to Regions Bank, as Trustee of the Grantor Reversionary Trust established for the benefit of Julia Grimes, as set forth in Appendix A: Items of Compensation for Julia Grimes. The Grantor Reversionary Trust established for the benefit of Julia Grimes shall terminate at the end of Compensation Year 21 (2031), the exhaustion of trust estate, or the death of Julia Grimes, whichever occurs first. No payment to the Grantor Reversionary Trust shall be made until petitioner provides respondent with documentation establishing that she has been appointed as the guardian/conservator of Julia Grimes's estate;

C. A lump sum payment of \$13,584.90, representing compensation for past un-reimbursable expenses, payable to Susan Lawson, petitioner;

D. A lump sum payment of \$26,645.20, representing compensation for satisfaction of the State of Colorado Medicaid lien, payable jointly to petitioner and

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Petitioner agrees to endorse this payment to the State of Colorado.

E. 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 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 as guardian/conservator of the estate of Julia Grimes, for the benefit of Julia Grimes, only so long as Julia Grimes is alive at the time a particular payment is due. At the Secretary's sole discretion,

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;
- 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.

the periodic payments may be provided to petitioner 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 petitioner 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. Life-contingent Annuity

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as Julia Grimes 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 Julia Grimes's death.

3. Guardianship

No payments under section II. A. or II. B. shall be made until petitioner provides the Secretary with documentation establishing her appointment as the guardian/conservator of Julia Grimes's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Julia Grimes 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 Julia Grimes upon submission of written documentation of such appointment to the Secretary.

III. Summary of Recommended Payments Following Judgment

- | | | |
|----|--|----------------------|
| A. | Lump Sum paid to petitioner, as guardian/conservator of the estate of Julia Grimes, for partial Yr 1 life care expenses, lost future earnings, and pain and suffering: | \$ 897,606.08 |
| B. | Lump Sum paid to Regions Bank, as trustee of the Grantor Reversionary Trust established for the benefit of Julia Grimes: | \$ 473,300.00 |
| C. | A lump sum paid to petitioner: | \$ 13,584.90 |
| D. | Reimbursement of the Medicaid lien: | \$ 26,645.20 |
| E. | An amount sufficient to purchase the annuity contract(s) described above in section II. E. | |

Respectfully submitted,

TONY WEST
Assistant Attorney General

TIMOTHY P. GARREN
Director
Torts Branch, Civil Division

MARK W. ROGERS
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Dated: January 7, 2011