

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-508V

(Filed: January 16, 2015)

* * * * *

CLIFTON HAIGLER and
CHARITY HAIGLER, legal representatives
of a minor child, T.T.H.,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

UNPUBLISHED,
Special Master Dorsey

Decision on Proffer; Damages;
Varicella Vaccine; Encephalitis.

Peter Joseph Sarda, Creech Law Firm, Raleigh, NC, for petitioners.
Claudi Barnes Gangi, United States Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On August 9, 2011, Clifton and Charity Haigler (“petitioners”) filed a petition pursuant to the National Vaccine Injury Compensation Program,² 42 U.S.C. §§ 300aa-1 to -34 (2006), as the legal representatives of their son, T.T.H., in which they alleged that a varicella vaccination that T.T.H. received on October 2, 2008, caused him to suffer encephalitis. Petition at 4.

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this ruling on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). 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).

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

A Ruling on Entitlement was issued on September 5, 2013, where the undersigned found, by a preponderance of the evidence, that the vaccination T.T.H received caused his injury.

On January 15, 2015, respondent filed a Proffer on Award of Compensation (“Proffer”). Respondent proffers that based upon her review of the evidence of record, petitioners should be awarded the following items of compensation: (1) Life Care Plan: respondent proffers that T.T.H. be awarded all items set forth in the life care plan illustrated by the chart attached to the Proffer at Tab A; (2) Lost Future Earnings: respondent proffers that the appropriate award for T.T.H.’s lost earnings is \$743,360.88; (3) Pain and Suffering: respondent proffers that petitioner should be awarded \$250,000.00, in actual and projected pain and suffering, and (4) Past Unreimbursable Expenses: respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$3,587.02, and (5) Medicaid Lien: respondent proffers that T.T.H. should be awarded funds to satisfy the State of North Carolina Medicaid lien in the amount of \$478,980.59. Petitioners agree with the proffered award for each item of compensation.

Based on the record as a whole, the undersigned finds that petitioners are entitled to an award as stated in the Proffer. Pursuant to the terms stated in the attached Proffer, the undersigned awards the following:

- A. A lump sum payment of \$898,498.22, in the form of a check payable to Regions Bank, as Trustee of the Grantor Reversionary Trust for the benefit of T.T.H., as set forth in Appendix A to the Proffer: Items of Compensation for T.T.H., representing trust seed funds consisting of the present year cost of compensation for residential facility expenses in Compensation Year 2039 through Compensation Year 2043 (\$527,425.00) and life care expenses in the first year after judgment (\$371,073.22);**
- B. A lump sum payment of \$993,360.88, in the form of a check payable to petitioners as the court-appointed guardian(s)/conservator(s) of the estate of T.T.H. for the benefit of T.T.H., representing compensation for lost earnings (\$743,360.88), and pain and suffering (\$250,000.00). No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of T.T.H.’s estate;**
- C. A lump sum payment of \$3,587.02, in the form of a check payable to petitioners, Clifton Haigler and Charity Haigler, representing compensation for past unreimbursable expenses;**
- D. A lump sum payment of \$478,980.59, in the form of a check made payable jointly to petitioners and**

**North Carolina Department of Health and Human Services
Division of Medical Assistance
Office of the Controller
2022 Mail Service Center
Raleigh, NC 27699-2022
Medicaid/Health Choice ID: 948650153K**

- E.** An amount sufficient to purchase an annuity contract, subject to the conditions described in the Proffer and the attachments to that Proffer.

Proffer ¶ II.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** herewith.³

IT IS SO ORDERED.

s/ Nora Beth Dorsey
Nora Beth Dorsey
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

CLIFTON HAIGLER and)	
CHARITY HAIGLER, legal representatives)	
of a minor child, T.T.H.,)	
)	
Petitioners,)	
)	
v.)	No. 11-508V
)	Special Master Dorsey
SECRETARY OF HEALTH AND HUMAN)	ECF
SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

Respondent engaged life care planner Ginger Walton, MSN, FNP, CNCLP, and petitioner engaged Kay Hairston, BSN, RN, CCM, CNCLP, to provide an estimation of T.T.H.’s future vaccine-injury related needs. For the purposes of this proffer, the term “vaccine related” is as described in the Special Master’s Ruling on Entitlement filed September 5, 2013. All items of compensation identified in the life care plan are illustrated by the chart entitled Appendix A: Items of Compensation for T.T.H., attached hereto as Tab A.¹ Respondent proffers that T.T.H. should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Tab A. Petitioners agree.

¹ The chart at Tab 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 Future Earnings

The parties agree that based upon the evidence of record, T.T.H. will not be gainfully employed in the future. Therefore, respondent proffers that T.T.H. should be awarded 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 T.T.H.'s lost future earnings is \$743,360.88. Petitioners agree.

C. Pain and Suffering

Respondent proffers that T.T.H. should be awarded \$250,000.00 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). Petitioners agree.

D. Past Unreimbursable Expenses

Evidence supplied by petitioners documents their expenditure of past unreimbursable expenses related to T.T.H.'s vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$3,587.02. Petitioners agree.

E. Medicaid Lien

Respondent proffers that T.T.H. should be awarded funds to satisfy the State of North Carolina Medicaid lien in the amount of \$478,980.59, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of North Carolina may have against any individual as a result of any Medicaid payments the State of North Carolina has made to, or on behalf of, T.T.H. from the date of his eligibility for benefits through the date of judgment in this case as a result of his vaccine-related injury suffered on or about October 2, 2008, under Title XIX of the Social Security Act.

II. Form of the Award

The parties recommend that the compensation provided to T.T.H. 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:²

A. A lump sum payment of \$898,498.22, representing trust seed funds consisting of the present year cost of compensation for residential facility expenses in Compensation Year 2039 through Compensation Year 2043 (\$527,425.00) and life care expenses in the first year after judgment (\$371,073.22), in the form of a check payable to Regions Bank, as Trustee of the Grantor Reversionary Trust established for the benefit of T.T.H., as set forth in Appendix A: Items of Compensation for T.T.H.;

B. A lump sum payment of \$993,360.88, representing compensation for lost future earnings (\$743,360.88) and pain and suffering (\$250,000.00), in the form of a check payable to petitioners as guardian(s)/conservator(s) of T.T.H., for the benefit of T.T.H. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of T.T.H.'s estate;

C. A lump sum payment of \$3,587.02, representing compensation for past unreimbursable expenses, in the form of a check payable to petitioners, Clifton Haigler and Charity Haigler;

D. A lump sum payment of \$478,980.59, representing compensation for satisfaction of the State of North Carolina lien, payable jointly to petitioners and

North Carolina Department of Health and Human Services
Division of Medical Assistance
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2022 Mail Service Center
Raleigh, NC 27699-2022
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² Should T.T.H. die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses and lost future earnings.

E. An amount sufficient to purchase an annuity contract,³ 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 company⁴ from which the annuity will be purchased.⁵ 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 Regions Bank, the Trustee of the Grantor Reversionary Trust for the benefit of T.T.H., only so long as T.T.H. is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to the Trustee of the Grantor Reversionary Trust 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 the Trustee of the Grantor Reversionary Trust 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

³ In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

⁴ 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.

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. Petitioners agree.

2. Life-contingent annuity

The Trustee of the Grantor Reversionary Trust will continue to receive the annuity payments from the Life Insurance Company only so long as T.T.H. is alive at the time that a particular payment is due. Written notice shall be provided to the Trustee of the Grantor Reversionary Trust, the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of T.T.H.'s death.

3. Guardianship

No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of T.T.H.'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of T.T.H., any such payment shall be made to the party or parties appointed by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of T.T.H. upon submission of written documentation of such appointment to the Secretary.

III. Summary of Recommended Payments Following Judgment

A.	Lump Sum paid to Regions Bank, as Trustee of the Grantor Reversionary Trust for the benefit of T.T.H.:	\$ 898,498.22
B.	Lump Sum paid to the court-appointed guardian(s)/conservator(s) of the estate of T.T.H. for the benefit of T.T.H.:	\$ 993,360.88
C.	Paid to petitioners, Clifton Haigler and Charity Haigler:	\$ 3,587.02

⁵ Petitioners authorize the disclosure of certain documents filed by the petitioners 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.

- D. Medicaid Lien: \$ 478,980.59
- E. An amount sufficient to purchase the annuity contract described above in section II. E.

Respectfully submitted,

JOYCE R. BRANDA
Acting Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
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Torts Branch, Civil Division

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S/ Claudia B. Gangi
CLAUDIA B. GANGI
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Dated: January 15, 2015

ITEMS OF COMPENSATION	G.R.	*	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Year 3	Compensation Year 4	Compensation Year 5	Compensation Year 6	Compensation Year 7	Compensation Year 8	Compensation Year 9
			2015	2016	2017	2018	2019	2020	2021	2022	2023
Shoes for AFO Braces	4%		192.00	192.00	192.00	192.00	192.00	192.00	192.00	192.00	192.00
Nebulizer Machine	4%	*									
Skilled Nurse: School Days	4%		76,590.00	76,590.00	76,590.00	76,590.00	76,220.00	76,220.00	76,220.00	76,220.00	76,220.00
Skilled Nurse: Non-Sch Days	4%		108,568.00	108,568.00	108,568.00	108,568.00	108,240.00	108,240.00	108,240.00	108,240.00	108,240.00
Respite Care	4%		9,840.00	9,840.00	9,840.00	9,840.00	9,840.00	9,840.00	9,840.00	9,840.00	9,840.00
Skilled Nurse 18 hrs/day	4%										
Skilled Nurse 24 hrs/day	4%										
Day Program	4%										
Trust Seed/Facility Care	4%		527,425.00								
Accessible Housing	0%		70,155.00								
Home Mods: Track System	0%		9,500.00								
Batteries for Track	4%							50.00			
Sling	4%								450.00		
2nd Sling	4%		450.00						450.00		
Track Inspection	4%			300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00
Modified Van	4%		35,000.00								
Van Maint	4%		450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00
Lost Future Earnings			743,360.88								
Pain and Suffering			250,000.00								
Past Unreimbursable Exp.			3,587.02								
Medicaid Lien			478,980.59								
Annual Totals			2,374,426.71	247,021.12	243,691.12	250,342.05	242,993.12	245,034.57	243,514.79	242,318.47	249,509.40

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to Regions Bank, Trustee of the Grantor Reversionary Trust established for the benefit of T.T.H. for trust seed funds (\$527,425.00) and Year 1 life care expenses (\$371,073.22): \$898,498.22.

As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/ conservator(s) of T.T.H. for lost future earnings (\$743,360.88) and pain and suffering (\$250,000.00): \$993,360.88.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioners, Clifton Haigler and Charity Haigler, for past unreimbursable expenses: \$3,587.02.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioners and the State of North Carolina, as reimbursement of the state's Medicaid lien: \$478,980.59.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at the rates indicated in column "G.R." above, compounded annually from the date of judgment.

Items denoted with an asterisk (*) covered by health insurance and/or Medicare.

ITEMS OF COMPENSATION	G.R.	*	Compensation Year 10	Compensation Year 11	Compensation Year 12	Compensation Year 13	Compensation Year 14	Compensation Year 15	Compensation Year 16	Compensation Year 17	Compensation Year 18
			2024	2025	2026	2027	2028	2029	2030	2031	2032
Shoes for AFO Braces	4%		192.00	192.00	192.00	192.00	192.00	192.00	192.00	192.00	192.00
Nebulizer Machine	4%	*									
Skilled Nurse: School Days	4%		121,360.00	121,360.00	121,360.00	121,360.00					
Skilled Nurse: Non-Sch Days	4%		171,216.00	171,216.00	171,216.00	171,216.00					
Respite Care	4%										
Skilled Nurse 18 hrs/day	4%						192,618.00	192,618.00	192,618.00	192,618.00	192,618.00
Skilled Nurse 24 hrs/day	4%						96,432.00	96,432.00	96,432.00	96,432.00	96,432.00
Day Program	4%						38,251.20	38,251.20	38,251.20	38,251.20	38,251.20
Trust Seed/Facility Care	4%										
Accessible Housing	0%										
Home Mods: Track System	0%										
Batteries for Track	4%			50.00					50.00		
Sling	4%					450.00					
2nd Sling	4%					450.00					
Track Inspection	4%		300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00
Modified Van	4%			29,750.00							
Van Maint	4%		450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00
Lost Future Earnings											
Pain and Suffering											
Past Unreimbursable Exp.											
Medicaid Lien											
Annual Totals			340,594.47	377,227.40	340,978.14	313,648.14	355,607.17	348,627.35	351,047.13	348,627.35	348,393.92

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.
 Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.
 As soon as practicable after entry of judgment, respondent shall make the following payment to Regions Bank, Trustee of the Grantor Reversionary Trust established for the benefit of T.T.H. for trust seed funds (\$527,425.00) and Year 1 life care expenses (\$371,073.22): \$898,498.22.
 As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/ conservator(s) of T.T.H. for lost future earnings (\$743,360.88) and pain and suffering (\$250,000.00): \$993,360.88.
 As soon as practicable after entry of judgment, respondent shall make the following payment to petitioners, Clifton Haigler and Charity Haigler, for past unreimbursable expenses: \$3,587.02.
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioners and the State of North Carolina, as reimbursement of the state's Medicaid lien: \$478,980.59.
 Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.
 Annual amounts shall increase at the rates indicated in column "G.R." above, compounded annually from the date of judgment.
 Items denoted with an asterisk (*) covered by health insurance and/or Medicare.

Appendix A: Items of Compensation for T.T.H.

ITEMS OF COMPENSATION	G.R.	*	Compensation Year 19	Compensation Year 20	Compensation Year 21	Compensation Year 22	Compensation Years 23-24	Compensation Years 25-29	Compensation Years 30-56	Compensation Years 57-Life
			2033	2034	2035	2036	2037-2038	2039-2043	2044-2070	2071-Life
Shoes for AFO Braces	4%		192.00	192.00	192.00	192.00	96.00	96.00	96.00	96.00
Nebulizer Machine	4%	*								
Skilled Nurse: School Days	4%									
Skilled Nurse: Non-Sch Days	4%									
Respite Care	4%									
Skilled Nurse 18 hrs/day	4%		192,618.00	192,618.00	192,618.00	192,618.00	192,618.00			
Skilled Nurse 24 hrs/day	4%		96,432.00	96,432.00	96,432.00	96,432.00	96,432.00			
Day Program	4%		38,251.20	38,251.20	38,251.20	38,251.20	38,251.20			
Trust Seed/Facility Care	4%							-	105,485.00	105,485.00
Accessible Housing	0%									
Home Mods: Track System	0%									
Batteries for Track	4%									
Sling	4%		450.00							
2nd Sling	4%		450.00							
Track Inspection	4%		300.00	300.00						
Modified Van	4%									
Van Maint	4%		450.00	450.00						
Lost Future Earnings										
Pain and Suffering										
Past Unreimbursable Exp.										
Medicaid Lien										
Annual Totals			356,557.84	350,135.07	352,162.65	349,915.83	358,631.69	31,330.49	136,815.49	136,181.89

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.
 Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.
 As soon as practicable after entry of judgment, respondent shall make the following payment to Regions Bank, Trustee of the Grantor Reversionary Trust established for the benefit of T.T.H. for trust seed funds (\$527,425.00) and Year 1 life care expenses (\$371,073.22): \$898,498.22.
 As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/ conservator(s) of T.T.H. for lost future earnings (\$743,360.88) and pain and suffering (\$250,000.00): \$993,360.88.
 As soon as practicable after entry of judgment, respondent shall make the following payment to petitioners, Clifton Haigler and Charity Haigler, for past unreimbursable expenses: \$3,587.02.
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioners and the State of North Carolina, as reimbursement of the state's Medicaid lien: \$478,980.59.
 Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.
 Annual amounts shall increase at the rates indicated in column "G.R." above, compounded annually from the date of judgment.
 Items denoted with an asterisk (*) covered by health insurance and/or Medicare.