

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

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MARISSA AREVALO, guardian \*  
and mother of R.M.R., a minor, \*  
\*  
Petitioner, \*

No. 15-406V  
Special Master Christian J. Moran

v. \*

Filed: June 12, 2018

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*  
\*  
Respondent. \*

Damages; decision based on proffer;  
diphtheria-tetanus-acellular pertussis  
("DTaP") vaccine; encephalopathy.

\*\*\*\*\*

Peter C. Beard, Springfield, IL, for Petitioner;  
Adriana R. Teitel, United States Department of Justice, Washington, DC, for  
Respondent.

**UNPUBLISHED DECISION AWARDING DAMAGES<sup>1</sup>**

On April 22, 2015, Marissa Arevalo filed a petition on behalf of her daughter, R.M.R., for compensation under the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-1 to 34 (2012). Ms. Arevalo alleged that R.M.R. suffered an on-Table encephalopathy as a result of a diphtheria-tetanus-acellular pertussis ("DTaP") vaccination administered on May 10, 2012.

Following a hearing, the undersigned ruled that petitioner had established entitlement to compensation for R.M.R.'s on-Table encephalopathy claim under the Vaccine Act. Ruling, issued Dec. 15, 2016, 2016 WL 7666535.

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<sup>1</sup> The E-Government Act, 44 § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

On June 8, 2018, respondent filed a Proffer on Award of Compensation, to which petitioner agrees. 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 the court awards petitioner:

- a. A lump sum of \$1,437,806.43 in the form of a check payable to petitioner as court-appointed guardian of R.M.R.'s estate for lost earnings, pain and suffering, and life care expenses for year one;**
- b. A lump sum of \$3,852.60 in the form of a check payable to petitioner for past unreimbursable expenses;**
- c. A lump sum of \$563,848.98 for compensation for satisfaction of the State of Illinois Medicaid lien in the form of a check jointly payable to petitioner and**

**Illinois Department of Healthcare & Family Services  
Bureau of Collections  
Technical Recovery Section  
P.O. Box 19174  
Springfield, IL 62794-9174  
Attn: Mr. Kevin Thornton  
Medicaid #: 96-080-091613**

**Petitioner agrees to endorse this payment to the State of Illinois.**

- d. An amount sufficient to purchase the annuity contract described in section II. D of the attached Proffer.**

**These amounts represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a)**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 15-406V according to this decision and the attached proffer.<sup>2</sup>

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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.

Any questions may be directed to my law clerk, Andrew Schick, at (202) 357-6360.

**IT IS SO ORDERED.**

s/Christian J. Moran  
Christian J. Moran  
Special Master

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

MARISSA AREVALO, guardian and mother  
of R.M.R., a minor,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

No. 15-406V  
Special Master Moran  
ECF

**PROFFER ON AWARD OF COMPENSATION**

On December 15, 2016, Special Master Moran issued a Ruling on Entitlement, which found that petitioner was entitled to Vaccine Act compensation for R.M.R.'s alleged Table Encephalopathy injury.

**I. Items of Compensation**

A. Life Care Items

The respondent engaged life care planner, M. Virginia Walton, RN, MSN, FNP, CNCLP, and petitioner engaged Terry K. Arnold, RN, CDMS, CRRN, CLCP, CNLCP, to provide an estimation of R.M.R.'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 Finding Entitlement. All items of compensation identified in the joint life care plan are supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for R.M.R., attached hereto

as Tab A.<sup>1</sup> Respondent proffers that R.M.R. should be awarded all items of compensation set forth in the joint life care plan and illustrated by the chart attached at Tab A.<sup>2</sup> Petitioner agrees.

B. Lost Future Earnings

The parties agree that based upon the evidence of record, R.M.R. will not be gainfully employed in the future. Therefore, respondent proffers that R.M.R. 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 R.M.R.'s lost earnings is \$829,794.00. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that R.M.R. should be awarded \$250,000.00 in actual pain and suffering. *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 R.M.R.'s vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$3,852.60. Petitioner agrees.

E. Medicaid Lien

Respondent proffers that R.M.R. should be awarded funds to satisfy a State of Illinois lien in the amount of \$563,848.98, which represents full satisfaction of any right of subrogation,

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<sup>1</sup> The chart at Tab A illustrates the annual benefits provided by the joint 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.

<sup>2</sup> The parties have no objection to the proffered award of damages. Assuming the Special Master issues a damages decision in conformity with this proffer, the parties intend to waive their right to seek review of such damages decision, recognizing that respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(f), to seek review of the Special Master's December 15, 2016, decision finding petitioner entitled to an award under the Vaccine Act.

assignment, claim, lien, or cause of action the State of Illinois may have against any individual as a result of any Medicaid payments the State of Illinois has made to or on behalf of R.M.R. 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 May 10, 2012, under Title XIX of the Social Security Act.

**II. Form of the Award**

The parties recommend that the compensation provided to R.M.R. 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<sup>3</sup>:

A. A lump sum payment of \$1,437,806.43, representing compensation for lost earnings (\$829,794.00), pain and suffering (\$250,000.00), and life care expenses for Year One (\$358,012.43), in the form of a check payable to petitioner as guardian of the estate of R.M.R., for the benefit of R.M.R. No payments shall be made until petitioner provides respondent with documentation establishing that she has been appointed as the guardian of R.M.R.'s estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian of the estate of R.M.R., 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 R.M.R. upon submission of written documentation of such appointment to the Secretary.

B. A lump sum payment of \$3,852.60, representing compensation for past unreimbursable expenses, in the form of a check payable to petitioner.

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<sup>3</sup> Should R.M.R. 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, future lost earnings, and future pain and suffering.

C. A lump sum payment of \$563,848.98, representing compensation for satisfaction of the State of Illinois Medicaid lien, payable jointly to petitioner and

Illinois Department of Healthcare & Family Services  
Bureau of Collections  
Technical Recovery Section  
P.O. Box 19174  
Springfield, IL 62794-9174  
Attn: Mr. Kevin Thornton  
Medicaid #: 96-080-091613

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

D. An amount sufficient to purchase the annuity contract,<sup>4</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 Tab A attached hereto, paid to the life insurance company<sup>5</sup> from which the annuity will be purchased.<sup>6</sup> Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent years shall be provided through

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<sup>4</sup> In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

<sup>5</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. R.M.R. 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>6</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.

respondent's purchase of an annuity, which annuity shall make payments directly to petitioner as guardian of the estate of R.M.R., only so long as R.M.R. 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 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 R.M.R. 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 R.M.R.'s death.

3. Guardianship

No payments shall be made until petitioner provides respondent with documentation establishing that she has been appointed as the guardian of R.M.R.'s estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian of the estate of R.M.R., 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 R.M.R. 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 court-appointed guardian of R.M.R.'s estate:	<b>\$ 1,437,806.43</b>
B.	Paid to petitioner:	<b>\$ 3,852.60</b>
C.	Medicaid Lien:	<b>\$ 563,848.98</b>
D.	An amount sufficient to purchase the annuity contract described above in section II. D.	

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

CATHARINE E. REEVES  
Deputy Director  
Torts Branch, Civil Division

ALEXIS BABCOCK  
Assistant Director  
Torts Branch, Civil Division

*/s/Adriana Teitel*  
ADRIANA TEITEL  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Telephone: (202) 616-3677

Dated: June 8, 2018







## Appendix A: Items of Compensation for R.M.R.

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Year 3	Compensation Years 4-5	Compensation Year 6	Compensation Year 7	Compensation Year 8	Compensation Year 9
				2018	2019	2020	2021-2022	2023	2024	2025	2026
Hand Sanitizer	4%		M	141.66	141.66	141.66	141.66	141.66	141.66	141.66	141.66
Barrier Cream	4%		M	173.16	173.16	173.16	173.16	173.16	173.16	173.16	173.16
Underpads	4%		M	317.50	317.50	317.50	317.50	317.50	317.50	317.50	317.50
Supply Storage	4%			201.95	13.46	13.46	13.46	13.46	13.46	13.46	13.46
Bilateral AFOs	4%	*									
Toe Separator	4%			130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00
WC Seating Eval & Clinic	4%	*									
Quickie	4%	*									
WC Maint	4%	*		504.50	504.50	504.50	504.50	504.50	504.50	504.50	504.50
Backpack	4%			25.00	12.50	12.50	12.50	12.50	12.50	12.50	12.50
Portable Ramp	4%			339.00							
Case Mngt	4%		M	4,080.00	4,080.00	4,080.00	3,060.00	3,060.00	3,060.00	3,060.00	3,060.00
Home Mods	4%			77,307.00							
Ceiling Lift	4%			11,000.00							
Lift Motor Repl	4%										
Slings	4%			597.04	298.52	298.52	298.52	298.52	298.52	298.52	298.52
Lift Battery	4%					60.00	30.00	30.00	30.00	30.00	30.00
Lift Maint	4%				200.00	200.00	200.00	200.00	200.00	200.00	200.00
Generator	4%			23,140.00							
Generator Maint	4%			315.00	315.00	315.00	315.00	315.00	315.00	315.00	315.00
Car Seat	4%			2,640.00							
WC Access Van	4%			53,061.00						45,101.85	
AAA	4%			114.00	114.00	114.00	114.00	114.00	114.00	114.00	114.00
Attendant Care	4%		M	106,740.00	106,740.00	106,740.00	106,740.00	106,740.00	106,740.00	189,540.00	189,540.00
Lost Future Earnings				829,794.00							
Pain and Suffering				250,000.00							
Past Unreimbursable Expenses				3,852.60							
Medicaid Lien				563,848.98							
Annual Totals				2,005,508.01	159,193.61	159,253.61	158,338.59	167,343.39	158,338.59	305,790.44	250,690.17

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ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Year 3	Compensation Years 4-5	Compensation Year 6	Compensation Year 7	Compensation Year 8	Compensation Year 9
				2018	2019	2020	2021-2022	2023	2024	2025	2026

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 the court-appointed guardian(s)/conservators(s) of the estate of R.M.R. for the benefit of R.M.R., for lost future earnings (\$829,794.00), pain and suffering (\$250,000.00), and Yr 1 life care expenses (\$358,012.43): \$1,437,806.43.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner, Marissa Arevalo, for past un-reimbursable expenses: \$2,058.62.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and the State of Illinois, as reimbursement of the state's Medicaid lien: \$563,848.98.

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 denoted with an "M" payable in 12 monthly installments at the discretion of respondent.







## Appendix A: Items of Compensation for R.M.R.

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 10	Compensation Year 11	Compensation Year 12	Compensation Year 13	Compensation Year 14	Compensation Year 15	Compensation Year 16	Compensation Year 17
				2027	2028	2029	2030	2031	2032	2033	2034
Hand Sanitizer	4%		M	141.66	141.66	141.66	141.66	141.66	141.66	141.66	141.66
Barrier Cream	4%		M	173.16	173.16	173.16	173.16	173.16	173.16	173.16	173.16
Underpads	4%		M	317.50	317.50	317.50	317.50	317.50	317.50	317.50	317.50
Supply Storage	4%			13.46	13.46	13.46	13.46	13.46	13.46	13.46	13.46
Bilateral AFOs	4%	*									
Toe Separator	4%			130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00
WC Seating Eval & Clinic	4%	*									
Quickie	4%	*									
WC Maint	4%	*		504.50	504.50	504.50	504.50	504.50			
Backpack	4%			12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
Portable Ramp	4%				339.00						
Case Mngt	4%		M	3,060.00	3,060.00	3,060.00	3,060.00	3,060.00	2,040.00	2,040.00	2,040.00
Home Mods	4%									77,307.00	
Ceiling Lift	4%									11,000.00	
Lift Motor Repl	4%				5,000.00						
Slings	4%			298.52	298.52	298.52	298.52	298.52	298.52	298.52	298.52
Lift Battery	4%			30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00
Lift Maint	4%			200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00
Generator	4%										
Generator Maint	4%			315.00	315.00	315.00	315.00	315.00	315.00	315.00	315.00
Car Seat	4%										
WC Access Van	4%								45,101.85		
AAA	4%			114.00	114.00	114.00	114.00	114.00	114.00	114.00	114.00
Attendant Care	4%		M	189,540.00	189,540.00	189,540.00	189,540.00	189,540.00	189,540.00	189,540.00	189,540.00
Lost Future Earnings											
Pain and Suffering											
Past Unreimbursable Expenses											
Medicaid Lien											
Annual Totals				241,417.59	254,641.07	245,661.27	241,871.11	241,986.07	290,104.30	318,859.25	225,452.45

## Appendix A: Items of Compensation for R.M.R.

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 10	Compensation Year 11	Compensation Year 12	Compensation Year 13	Compensation Year 14	Compensation Year 15	Compensation Year 16	Compensation Year 17
				2027	2028	2029	2030	2031	2032	2033	2034

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 the court-appointed guardian(s)/conservators(s) of the estate of R.M.R. for the benefit of R.M.R., for lost future earnings (\$829,794.00), pain and suffering (\$250,000.00), and Yr 1 life care expenses (\$358,012.43): \$1,437,806.43.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner, Marissa Arevalo, for past un-reimbursable expenses: \$2,058.62.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and the State of Illinois, as reimbursement of the state's Medicaid lien: \$563,848.98.

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 denoted with an "M" payable in 12 monthly installments at the discretion of respondent.







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ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 18	Compensation Year 19	Compensation Year 20	Compensation Year 21	Compensation Year 22	Compensation Years 23-59	Compensation Years 60-Life
				2035	2036	2037	2038	2039	2040-2076	2077-Life
Hand Sanitizer	4%		M	141.66	141.66	141.66	141.66	141.66	141.66	141.66
Barrier Cream	4%		M	173.16	173.16	173.16	173.16	173.16	173.16	173.16
Underpads	4%		M	317.50	317.50	317.50	317.50	317.50	317.50	317.50
Supply Storage	4%			13.46	13.46	13.46	13.46	13.46	13.46	13.46
Bilateral AFOs	4%	*								
Toe Separator	4%			130.00	130.00	130.00	130.00	130.00	130.00	130.00
WC Seating Eval & Clinic	4%	*								
Quickie	4%	*								
WC Maint	4%	*								
Backpack	4%			12.50	12.50	12.50	12.50	12.50	12.50	12.50
Portable Ramp	4%						339.00	33.90	33.90	33.90
Case Mngt	4%		M	2,040.00	2,040.00	2,040.00	2,040.00	2,040.00	2,040.00	2,040.00
Home Mods	4%									
Ceiling Lift	4%									
Lift Motor Repl	4%						5,000.00	500.00	500.00	500.00
Slings	4%			298.52	298.52	298.52	298.52	298.52	298.52	298.52
Lift Battery	4%			30.00	30.00	30.00	30.00	30.00	30.00	30.00
Lift Maint	4%			200.00	200.00	200.00	200.00	200.00	200.00	200.00
Generator	4%						23,140.00	1,157.00	1,157.00	1,157.00
Generator Maint	4%			315.00	315.00	315.00	315.00	315.00	315.00	315.00
Car Seat	4%									
WC Access Van	4%							45,101.85	6,443.12	6,443.12
AAA	4%			114.00	114.00	114.00	114.00	114.00	114.00	114.00
Attendant Care	4%		M	379,080.00	379,080.00	379,080.00	379,080.00	379,080.00	379,080.00	379,080.00
Lost Future Earnings										
Pain and Suffering										
Past Unreimbursable Expenses										
Medicaid Lien										
Annual Totals				418,897.45	425,194.86	416,598.44	452,855.24	484,228.95	428,813.08	428,177.08

## Appendix A: Items of Compensation for R.M.R.

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 18 2035	Compensation Year 19 2036	Compensation Year 20 2037	Compensation Year 21 2038	Compensation Year 22 2039	Compensation Years 23-59 2040-2076	Compensation Years 60-Life 2077-Life

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 the court-appointed guardian(s)/conservators(s) of the estate of R.M.R. for the benefit of R.M.R., for lost future earnings (\$829,794.00), pain and suffering (\$250,000.00), and Yr 1 life care expenses (\$358,012.43): \$1,437,806.43.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner, Marissa Arevalo, for past un-reimbursable expenses: \$2,058.62.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and the State of Illinois, as reimbursement of the state's Medicaid lien: \$563,848.98.

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 denoted with an "M" payable in 12 monthly installments at the discretion of respondent.