

Corrected

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0862V

UNPUBLISHED

MARIA CARRILLO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 31, 2022

Special Processing Unit (SPU);
Damages Decision based on Proffer;
Influenza (Flu); Guillain-Barré
Syndrome (GBS).

Edward M. Kraus, Law Offices of Chicago Kent, Chicago, IL, for Petitioner.

Emilie Williams, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On June 12, 2019, Maria Carrillo filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered Guillain-Barre Syndrome (“GBS”) as a result of an influenza (“flu”) vaccine administered on October 2, 2017. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 9, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a Table GBS injury. On March 31, 2022, Respondent filed a proffer on an award of compensation (“Proffer”). In the Proffer, Respondent represented that Petitioner agrees with the proffered award. Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Pursuant to the terms stated in the attached Proffer, I award the following:

- A. A lump sum payment of \$272,063.26 (representing \$22,063.26 for life care expenses expected to be incurred during the first year after judgment, and \$250,000.00 for pain and suffering) in the form of a check payable to Petitioner.
- B. A lump sum payment of \$104,327.12, representing compensation for satisfaction of a Colorado Department of Health Care Policy & Financing Medicaid lien, payable jointly to Petitioner and:

**Colorado Department of Health Care Policy & Financing
ATTN: Athena Mortenson
Third Party Liability & Recoveries Section
1570 Grant Street
Denver, CO 80203
State ID No.: Q195074
TAX ID No.: 84-0644739**

Petitioner agrees to endorse this check to the Colorado Department of Health Care Policy & Financing.

- C. An amount sufficient to purchase an annuity contract (subject to the conditions described in the attached Proffer, and which contract will provide payments for the life care items contained in the attached life care plan) paid to the life insurance company from which the annuity will be purchased.

These amounts represent compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

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

“vaccine related” is as described in the respondent’s Rule 4(c) Report. All items of compensation identified in the life care plan are supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for Maria Carrillo, attached hereto as Tab A. Respondent proffers that petitioner should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Tab A. Petitioner agrees.

B. Pain and Suffering

Respondent proffers that petitioner should be awarded \$250,000.00 in actual pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

C. Colorado Department of Health Care Policy & Financing Medicaid Lien

Respondent proffers that Maria Carrillo should be awarded funds to satisfy a Colorado Department of Health Care Policy & Financing Medicaid lien in the amount of \$104,327.12, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action may have against any individual as a result of any Medicaid payments Colorado Department of Health Care Policy & Financing has made to or on behalf of Maria Carrillo 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 October 2, 2017, under Title XIX of the Social Security Act.

II. Form of the Award

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 below,

and request that the Chief Special Master's decision and the Court's judgment award the following:¹

A. A lump sum payment of \$272,063.26, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$22,063.26) and pain and suffering (\$250,000.00) in the form of a check payable to petitioner, Maria Carrillo.

B. A lump sum payment of \$104,327.12, representing compensation for satisfaction of a Colorado Department of Health Care Policy & Financing Medicaid lien, payable jointly to petitioner and:

Colorado Department of Health Care Policy and Financing
ATTN: Athena Mortenson
Third Party Liability & Recoveries Section
1570 Grant Street
Denver, CO 80203
State ID No: Q195074
TAX ID No: 84-0644739

Petitioner agrees to endorse this check to the Colorado Department of Health Care Policy and Financing.

C. An amount sufficient to purchase an annuity contract,² 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 company³ from

¹ Should petitioner 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.

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

³ 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;

which the annuity will be purchased.⁴ 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, Maria Carrillo, only so long as petitioner 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 she, Maria Carrillo, is alive at the time that a particular payment is due.

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- 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.

Written notice shall be provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Maria Carrillo'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, Maria Carrillo:	\$272,063.26
B.	Medicaid lien:	\$104,327.12
C.	An amount sufficient to purchase the annuity contract described above in section II.C..	

⁴ 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.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

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

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

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s/Emilie F. Williams
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Dated: March 31, 2022

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Years 2-5	Compensation Year 6	Compensation Years 7-10	Compensation Years 11-21	Compensation Years 22-24	Compensation Year 25	Compensation Year 26
				2022	2023-2026	2027	2028-2031	2032-2042	2043-2045	2046	2047
Medicare Part B Premium	5%		M							2,041.20	2,041.20
Medicare Part B Deductible	5%									233.00	233.00
Primary Care	5%	*		208.32	208.32	208.32	208.32	208.32	208.32	41.66	41.66
Neurology	5%	*		299.00	299.00	299.00	299.00	299.00	299.00	59.80	59.80
Neurology Mileage	4%			9.32	9.32	9.32	9.32	9.32	9.32	9.32	9.32
Care Management	4%		M	1,980.00	1,980.00	1,320.00	1,320.00				
Magnesium	4%			10.95	10.95	10.95	10.95	10.95	10.95	10.95	10.95
Panty Liners	4%			73.00	73.00	73.00	73.00	73.00	73.00	73.00	73.00
Wipes	4%			50.24	50.24	50.24	50.24	50.24	50.24	50.24	50.24
Cane	4%			16.37	3.27	3.27	3.27	3.27	3.27	3.27	3.27
Cane Tips	4%			15.34	15.34	15.34	15.34	15.34	15.34	15.34	15.34
Walker	4%			69.99	14.00	14.00	14.00	14.00	14.00	14.00	14.00
Manual Wheelchair	4%	*		285.00	57.00	57.00	57.00	57.00			57.00
AFO	4%	*		85.75	21.44	21.44	21.44	21.44		17.15	4.29
Shower Transfer Bench	4%			52.99	10.60	10.60	10.60	10.60	10.60	10.60	10.60
Elevated Toilet Seat	4%			39.43	7.89	7.89	7.89	7.89	7.89	7.89	7.89
Grab Bars (2)	4%			39.94	3.99	3.99	3.99	3.99	3.99	3.99	3.99
Reacher (2)	4%			18.99	1.90	1.90	1.90	1.90	1.90	1.90	1.90
Button Hook	4%			9.95	1.99	1.99	1.99	1.99	1.99	1.99	1.99
Zipper Pull	4%			11.95	3.98	3.98	3.98	3.98	3.98	3.98	3.98
Dressing Stick & Shoehorn	4%			9.95	3.32	3.32	3.32	3.32	3.32	3.32	3.32
Built Up Handle Utensils	4%			38.53	12.84	12.84	12.84	12.84	12.84	12.84	12.84
Physical Therapy	4%			1,800.00	1,800.00	600.00	200.00	200.00	200.00	120.00	120.00
Physical Therapy Mileage	4%			13.18	13.18	13.18	4.39	4.39	4.39	4.39	4.39
Occupational Therapy	4%			2,700.00	2,700.00	2,700.00	900.00	900.00	900.00	180.00	180.00
Occupational Therapy Mileage	4%			9.07	9.07	9.07	3.02	3.02	3.02	3.02	3.02
Companion Care	4%		M	12,896.00	12,896.00	12,896.00	12,896.00	12,896.00	12,896.00	19,344.00	19,344.00
House Cleaning	4%		M	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00
Pain and Suffering				250,000.00							
Medicaid Lien				104,327.12							
Annual Totals				376,390.38	21,526.64	19,666.64	17,451.80	16,131.80	16,053.36	23,586.85	23,630.99

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Years 2-5	Compensation Year 6	Compensation Years 7-10	Compensation Years 11-21	Compensation Years 22-24	Compensation Year 25	Compensation Year 26
				2022	2023-2026	2027	2028-2031	2032-2042	2043-2045	2046	2047

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 petitioner for Yr 1 life care expenses (\$22,063.26) and pain and suffering (\$250,000.00): \$272,063.26
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and the Colorado Department of Health Care & Financing, as reimbursement of the state's Medicaid lien: \$104,327.12.
 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 above in column G.R., 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 twelve monthly installments totaling the annual amount indicated.

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Years 27-31 2048-2052	Compensation Years 32-34 2053-2055	Compensation Years 35-Life 2056-Life
Medicare Part B Premium	5%		M	2,041.20	2,041.20	2,041.20
Medicare Part B Deductible	5%			233.00	233.00	233.00
Primary Care	5%	*		41.66	41.66	41.66
Neurology	5%	*		59.80	59.80	59.80
Neurology Mileage	4%			9.32	9.32	9.32
Care Management	4%		M			
Magnesium	4%			10.95	10.95	10.95
Panty Liners	4%			73.00	73.00	73.00
Wipes	4%			50.24	50.24	50.24
Cane	4%			3.27	3.27	3.27
Cane Tips	4%			15.34	15.34	15.34
Walker	4%			14.00	14.00	14.00
Manual Wheelchair	4%	*		11.40	11.40	11.40
AFO	4%	*		4.29	4.29	4.29
Shower Transfer Bench	4%			10.60	10.60	10.60
Elevated Toilet Seat	4%			7.89	7.89	7.89
Grab Bars (2)	4%			3.99	3.99	3.99
Reacher (2)	4%			1.90	1.90	1.90
Button Hook	4%			1.99	1.99	1.99
Zipper Pull	4%			3.98	3.98	3.98
Dressing Stick & Shoehorn	4%			3.32	3.32	3.32
Built Up Handle Utensils	4%			12.84	12.84	12.84
Physical Therapy	4%			120.00	120.00	120.00
Physical Therapy Mileage	4%			4.39	4.39	4.39
Occupational Therapy	4%			180.00	180.00	180.00
Occupational Therapy Mileage	4%			3.02	3.02	3.02
Companion Care	4%		M	19,344.00	19,344.00	25,792.00
House Cleaning	4%		M	1,320.00		
Pain and Suffering						
Medicaid Lien						
Annual Totals				23,585.39	22,265.39	28,713.39

ITEMS OF COMPENSATION	G.R.	*	M	Compensation	Compensation	Compensation
				Years 27-31	Years 32-34	Years 35-Life
				2048-2052	2053-2055	2056-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 petitioner for Yr 1 life care expenses (\$22,063.26) and pain and suffering (\$250,000.00): \$272,063.26

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and the Colorado Department of Health Care & Financing, as reimbursement of the state's Medicaid lien: \$104,327.12.

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 above in column G.R., 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 twelve monthly installments totaling the annual amount indicated.