

2, ECF No. 12. Respondent further stated that “Medical personnel at DICP have reviewed the facts of this case and concluded that petitioner’s claim meets the Table criteria for varicella vaccine-strain viral reactivation.” *Id.* at 11.

From October 20, 2020 to November 8, 2021, the parties engaged in informal settlement negotiations. *See* ECF Nos. 15, 23, 26, 27, 29, 30, 31 and 32.

Respondent filed a proffer on November 16, 2021 (ECF No. 33), agreeing to issue the following payments:

1. A Lump Sum

A lump sum of \$1,842.65, which amount represents past unreimbursable expenses related to S.M.’s vaccine-related injury.

2. An Annuity

The remainder of damages shall be paid in the form of an annuity contract, which shall be purchased as soon as practicable after entry of judgment. Accordingly, pursuant to 42 U.S.C. § 300aa-15(f)(4), I order Respondent to purchase, and take ownership of, an annuity contract in the amount of \$40,000.00, as described below:

The Life Insurance Company must meet the following criteria:

1. Have a minimum of \$250,000,000 of capital and surplus, exclusive of any mandatory security valuation reserve; and
2. 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 Secretary of Health and Human Services shall purchase an annuity contract from the Life Insurance Company for the benefit of S.M. pursuant to which the Life Insurance Company will agree to make payments periodically to S.M. as described in paragraph 11A of the attached Proffer.

These amounts represent all elements of compensation that would be available under § 300aa-15(a).

I adopt the parties' proffer attached hereto, and award compensation in the amount and on the terms set forth therein. The clerk of court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/ Katherine E. Oler
Katherine E. Oler
Special Master

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

A. Past Unreimbursable Expenses

Evidence supplied by petitioner documents her expenditure of past unreimbursable expenses related to S.M.'s vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$1,842.65, in the form of a check payable to petitioner. Petitioner agrees.

B. Pain and Suffering

For pain and suffering, an amount not to exceed \$40,000.00 to purchase an annuity contract,³ paid to the life insurance company⁴ from which the annuity will be purchased,⁵ subject to the conditions described below, that will provide payments to S.M. as set forth below:

Beginning August 3, 2035, \$6,339.84 per year for ten (10) years certain.

² Should S.M. 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.

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.

⁵ 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.

The purchase price of the annuity described in this section II.B shall neither be greater nor less than \$40,000.00. In the event that the cost of the certain annuity payments set forth above varies from \$40,000.00, the annual payment set forth above shall be adjusted to ensure that the total cost of the annuity is neither less than nor greater than \$40,000.00. Should S.M. predecease any of the certain annuity payments set forth above, said payments shall be made to his estate. Written notice to the Secretary of Health and Human Services and to the Life Insurance Company shall be provided within twenty (20) days of S.M.'s death.

These amounts represent all elements of compensation to which S.M. would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.⁶

III. Summary of Recommended Payments Following Judgment

- A. Past Unreimbursable Expenses: **\$1,842.65**
- B. An amount of **\$40,000.00** to purchase the annuity contract described above in section II.B.

Respectfully submitted,

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⁶ At the time payment is received, S.M. will be an adult, and thus guardianship is not required.

/s/Catherine E. Stolar
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