

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 99-313 V

Filed: September 9, 2011

Not for Publication

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JENNIFER GARLAND,

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Petitioner,

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Damages Decision Based on Proffer

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v.

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SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

\*

\*

\*

Respondent.

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Clifford J. Shoemaker, Vienna, VA, for petitioner.

Linda S. Renzi, Washington, DC, for respondent.

**MILLMAN, Special Master**

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

On September 9, 2011, respondent filed a Proffer on Award of Compensation. On September 9, 2011, petitioner's counsel communicated to the undersigned's law clerk that petitioner accepts respondent's Proffer. Based on the record as a whole, the special master finds that petitioner is entitled to the award as stated in the Proffer. Pursuant to the terms stated in the attached Proffer, the court awards petitioner:

- a. A lump sum payment of **\$364,733.00**, representing life care expenses for Year 1 (\$130,769.00); past unreimbursed expenses (\$1,600.00); and past and future pain and

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<sup>1</sup> Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this decision 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 constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to 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 redact such material from public access.

suffering (\$232,364.00). The award should be in the form of a check payable to petitioner.

- b. An amount sufficient to purchase an annuity contract paid to the life insurance company, subject to the conditions described in the proffer.

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.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: September 9, 2011

s/ Laura D. Millman  
Laura D. Millman  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

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

_____		)	
JENNIFER GARLAND,		)	
		)	
	Petitioner,	)	No. 99-313V
		)	Special Master
	v.	)	Laura D. Millman
		)	
SECRETARY OF HEALTH AND		)	
HUMAN SERVICES,		)	
		)	
	Respondent.	)	
_____		)	

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

Respondent submits the following recommendations regarding items of compensation to be awarded to petitioner under the Vaccine Act.

**I. ITEMS OF COMPENSATION**

**A. LIFE CARE ITEMS**

The petitioner engaged life care planner Liz Holakiewicz, RN, BSN, CCM, CNLCP and the respondent engaged Linda Curtis, RN, MS, CCM, CNLCP (the “Planners”) to work together to provide an estimation of Jennifer Garland’s (“Petitioner”) future vaccine-injury related needs. For the purposes of this proffer, the term “vaccine-injury” is as described in the special master’s decision dated October 16, 2008. All items of compensation in the final life care plan, agree upon by the Planners, are supported by the evidence and are illustrated by the chart,

attached hereto as **TAB A: Summary of Life Care Items.**<sup>1</sup>

Respondent proffers Jennifer Garland should be awarded all items of compensation that are set forth in Tab A. Petitioner agrees.

**B. LOST FUTURE EARNINGS**

The parties agree that based upon the evidence in the record, Jennifer Garland will be able to engage in gainful employment. Therefore, the respondent proffers that Jennifer Garland is not entitled to receive future lost earnings compensation provided for under the Vaccine Act, 42 U.S.C. §300aa-15(a)(3)(A). Petitioner agrees.

**C. PAIN AND SUFFERING**

Respondent proffers that Jennifer Garland should be awarded \$232,364.00 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). Petitioner agrees.

**D. PAST UNREIMBURSED EXPENSES**

Evidence supplied by Petitioner documents her expenditure of past unreimbursable expenses related to Jennifer Garland's vaccine-related injury. Respondent proffers that the Petitioner

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<sup>1</sup> The chart at Tab A illustrates the annual benefits as contained in 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.

is entitled to past un-reimbursed expenses in the amount of \$1,600.00. Petitioner agrees.

**E. MEDICAID LIEN**

To the best of respondent's knowledge and upon the representation of Petitioner, Petitioner has never received Medicaid benefits, and accordingly, there is no Medicaid lien against her.

**F. ATTORNEYS' FEES AND COSTS**

This proffer does not address final attorneys' fees and costs. Petitioner is entitled to reasonable attorneys' fees and costs, to be determined at a later date upon Petitioner filing substantiating documentation.

**II. FORM OF THE AWARD**

The parties recommend that the compensation provided to Jennifer Garland should be made through a combination of a one-time cash payment and future annuity payments as described below, and request that the special master's decision and the Court's judgment reflect the following items of compensation.

Respondent proffers and Petitioner agrees that an award of compensation include the following elements:

A. A lump sum payment of \$364,733.00, representing life care expenses for Year 1 (\$130,769.00); past un-reimbursed expenses (\$1,600.00); and, past and future pain and suffering

(\$232,364.00); in the form of a check payable to Petitioner.

B. An amount sufficient to purchase an annuity contract, paid to the life insurance company<sup>2</sup> from which the annuity will be purchased, subject to the conditions described below, that will provide payments for the items contained in the life care plan as illustrated by **Tab B: Funding Portfolio**, attached hereto. Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent payments shall be provided through respondent's purchase of an annuity, which annuity will make payments directly to Jennifer Garland, only so long as Jennifer Garland is alive at the time a particular payment is due. At the Secretary's sole discretion, payments will be provided to Petitioner monthly, quarterly, annual or other installments. The "annual amounts" set forth in Tab B describe the total year sum to be paid to the Petitioner

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<sup>2</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. 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.

and do not require that the payment be made in one single payment.

1. Growth Rates

Respondent proffers that a four percent (4.0%) growth rate should be applied to all non-medical life care items, and a six percent (6.0%) growth rate should be applied to all medical life care items. The benefits illustrated in the chart at Tab B that are to be paid through annuity payments should therefore grow as follows: four percent (4.0%) compounded annually from the date of judgment for non-medical items, and six percent (6.0%) compounded annually from the date of judgment for medical items. Petitioner agrees.

2. Life-contingent Annuity

The Petitioner will continue to receive the annuity payments for future medical care from the Life Insurance Company only so long as Jennifer Garland is alive at the time that a particular payment is due. Petitioner's estate shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Jennifer Garland's death.

3. Guardianship Issues

Petitioner is a legally competent adult, and aforementioned payments will be made directly to Petitioner.

**III. SUMMARY OF RECOMMENDED PAYMENTS FOLLOWING JUDGMENT**

- A. Lump Sum paid to Jennifer Garland: \$364,733.00
- B. An amount sufficient to purchase the annuity contract described above in section II. B.

Respectfully submitted,

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Assistant Attorney General

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s/Linda S. Renzi  
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Dated: September 9, 2011



Pet. Jennifer Garland  
D.O.B. 03/13/1960

DATE: 09/01/11  
TIME: 01:04 PM

SUMMARY OF LIFE CARE ITEMS - RESPONDENT'S & PETITIONERS AGREED UPON LIFE CARE PLAN dated August 31, 2011

ITEM OF CARE		Insurance	Physicians Medical	Ancillary Services	Medications OTC	Supplies & Equipment	Home Services	Transportation	Home Mods	TOTALS of Items with a 6.0% Growth Rate	TOTALS of Items with a 4.0% Growth Rate	TOTALS OF 4.0% & 6.0% ITEMS & APPLYING THE GROWTH RATE
GROWTH RATE		6.0%	6.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%			
AGE	YEAR											
51	2011	2,000.00	1,460.00	5,075.00	610.00	572.18	10,296.00	605.67	110,150.00	3,460	127,309	130,769
52	2012	2,000.00	1,080.00	1,008.00	602.00	572.18	10,296.00	201.89	0.00	3,080	12,680	16,452
53	2013	2,000.00	1,080.00	1,008.00	602.00	572.18	10,296.00	201.89	0.00	3,080	12,680	17,175
54	2014	2,000.00	1,080.00	1,008.00	602.00	572.18	10,296.00	201.89	0.00	3,080	12,680	17,932
55	2015	2,000.00	1,080.00	1,008.00	602.00	572.18	10,296.00	201.89	0.00	3,080	12,680	18,722
56	2016	2,000.00	1,080.00	1,008.00	602.00	600.88	10,296.00	201.89	0.00	3,080	12,709	19,584
57	2017	7,720.28	1,220.00	1,008.00	602.00	2,613.88	18,200.00	6,701.89	0.00	8,940	29,126	49,535
58	2018	7,720.28	1,080.00	1,008.00	602.00	2,889.68	18,200.00	851.89	0.00	8,800	23,552	44,225
59	2019	9,566.12	660.00	0.00	0.00	2,049.73	18,200.00	851.89	43.44	10,226	21,145	45,237
60	2020	9,566.12	660.00	0.00	0.00	2,049.73	18,200.00	851.89	0.00	10,226	21,102	47,311
61	2021	9,566.12	660.00	0.00	0.00	2,049.73	18,200.00	851.89	0.00	10,226	21,102	49,549
62	2022	9,566.12	660.00	0.00	0.00	2,049.73	18,200.00	851.89	0.00	10,226	21,102	51,897
63	2023	9,566.12	660.00	0.00	0.00	3,279.33	40,404.00	851.89	0.00	10,226	44,535	91,879
64	2024	9,566.12	660.00	0.00	0.00	2,743.90	40,404.00	851.89	0.00	10,226	44,000	95,074
65	2025	6,865.32	660.00	0.00	0.00	2,743.90	40,404.00	851.89	0.00	7,525	44,000	93,207
66	2026	6,865.32	660.00	0.00	0.00	4,675.56	40,404.00	3,490.00	121.71	7,525	48,691	105,725
67	2027	6,865.32	660.00	0.00	0.00	2,289.01	40,404.00	683.00	12.17	7,525	43,388	100,382
68	2028	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	196,245
69	2029	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	204,501
70	2030	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	213,110
71	2031	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	222,090
72	2032	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	231,456
73	2033	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	241,226
74	2034	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	251,418
75	2035	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	262,049
76	2036	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	273,141
77	2037	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	284,712
78	2038	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	296,785
79	2039	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	309,382
80	2040	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	322,527
81	2041	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	336,244
82	2042	6,865.32	660.00	0.00	0.00	2,289.01	87,360.00	683.00	12.17	7,525	90,344	350,558
		208,413	25,000	12,131	4,824	67,231	1,683,396	29,550	110,510	233,413	1,907,642	4,990,102
		9.73%	1.17%	0.57%	0.23%	3.14%	78.62%	1.38%	5.16%			100.00%

**RESPONDENT'S & PETITIONER'S AGREED UPON LIFE CARE PLAN dated August 31, 2011**

**4.0 % and 6.0% GROWTH RATES**

DATE: 09/01/11  
 TIME: 01:06 PM

Pet. Jennifer Garland  
 D.O.B. 03/13/1960

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
<b>Settlement Item</b>	<b>TOTAL</b>	<b>ANNUAL</b>	<b>CASH &amp;</b>	<b>ANNUITY</b>	<b>ANNUITY</b>	<b>ANNUITY</b>	<b>ANNUITY</b>	<b>ANNUITY</b>	<b>ANNUITY</b>	<b>ANNUAL</b>	<b>CUMULATIVE</b>
<b>Starting Amount</b>	<b>MEDICAL</b>	<b>PAID</b>	<b>ANNUITY</b>	3,265	10,675	13,187	30,915	69,466	175,982	<b>SAFETY</b>	<b>SAFETY</b>
<b>Inflation Factor</b>	<b>CARE NEEDS</b>	<b>BENEFITS</b>	<b>LUMP</b>	6.00%	6.00%	4.00%	4.00%	4.00%	4.00%	<b>MARGIN</b>	<b>MARGIN</b>
<b>Beginning Year</b>	2011		<b>SUMS</b>	2012	2017	2012	2017	2023	2028	2011	2011
<b>Ending Year</b>	2042			2016	LIFE	2016	2022	2027	LIFE	2042	2042

AGE	YEAR	TOTAL NEEDS	ANNUAL TOTAL	Cash & Lump Sums	Deferred Annuity	Deferred Annuity	Deferred Annuity	Deferred Annuity	Deferred Annuity	Deferred Annuity	Safety Margin	Cum.Safety Margin
51	2011	130,769	130,769	130,769							0	0
52	2012	16,452	16,452		3,265		13,187				0	0
53	2013	17,175	17,175		3,461		13,714				0	0
54	2014	17,932	17,932		3,669		14,263				0	0
55	2015	18,722	18,722		3,889		14,834				0	0
56	2016	19,584	28,287	8,738	4,122		15,427			8,703		8,703
57	2017	49,535	41,590			10,675		30,915		-7,945		758
58	2018	44,225	43,467			11,316		32,152		-758		0
59	2019	45,237	45,432			11,994		33,438		195		195
60	2020	47,311	47,489			12,714		34,775		178		373
61	2021	49,549	49,643			13,477		36,166		94		467
62	2022	51,897	51,898			14,286		37,613		1		468
63	2023	91,879	108,799	24,190		15,143			69,466	16,919		17,388
64	2024	95,074	88,296			16,051			72,245	-6,779		10,609
65	2025	93,207	92,149			17,014			75,134	-1,059		9,550
66	2026	105,725	96,175			18,035			78,140	-9,550		0
67	2027	100,382	100,383			19,117			81,265	0		1
68	2028	196,245	196,246			20,264				175,982	1	2
69	2029	204,501	204,501			21,480				183,021	1	3
70	2030	213,110	213,111			22,769				190,342	1	4
71	2031	222,090	222,091			24,135				197,956	1	5
72	2032	231,456	231,457			25,583				205,874	1	6
73	2033	241,226	241,227			27,118				214,109	1	7
74	2034	251,418	251,419			28,745				222,673	1	8
75	2035	262,049	262,050			30,470				231,580	1	9
76	2036	273,141	273,142			32,298				240,844	1	11
77	2037	284,712	284,713			34,236				250,477	1	12
78	2038	296,785	296,787			36,290				260,496	1	13
79	2039	309,382	309,384			38,468				270,916	1	15
80	2040	322,527	322,529			40,776				281,753	2	16
81	2041	336,244	336,245			43,222				293,023	2	18
82	2042	350,558	350,560			45,816				304,744	2	20

ITEMIZED TOTALS	4,990,102	4,990,121	163,697	18,405	631,494	71,425	205,058	376,250	3,523,791			20
	0.00%		163,697	18,405	329,918	71,425	205,058	376,250	1,389,958	2,554,711	Guar. Yield	
	SAFETY MARGIN		163,697	18,405	631,494	71,425	205,058	376,250	3,523,791	4,990,121	Exp. Yield	
					<b>GY 18 YRS</b>				<b>GY 7 YRS</b>			