

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: September 9, 2024

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BRUCE MATZNER,

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Unpublished

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Petitioner,

\*

No. 22-323V

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v.

\*

Special Master Gowen

\*

SECRETARY OF HEALTH

\*

AND HUMAN SERVICES,

\*

\*

Respondent.

\*

\* \* \* \* \*

*Jessica A. Wallace*, Siri & Glimstad LLP, Aventura, FL, for petitioner.

*Mallori B. Openchowski*, U.S. Dept. of Justice, for respondent.

### **DECISION ON PROFFER<sup>1</sup>**

On March 24, 2022, Bruce Matzner (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act.<sup>2</sup> Petition (ECF No. 1). Petitioner alleged that he suffered from Guillain-Barre Syndrome (“GBS”) resulting from an influenza (“flu”) vaccination he received on September 11, 2020. *Id.*

On December 26, 2022, respondent filed the Rule 4(c) report conceding that petitioner satisfied the criteria set forth in the Vaccine Injury Table and the Qualifications and Aids to Interpretation (“QAI”) for a GBS Table injury. Respondent’s Report (ECF No. 19). Accordingly, on December 27, 2022, the undersigned issued a Ruling on Entitlement, finding

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<sup>1</sup> In accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012), because this opinion contains a reasoned explanation for the action in this case, **this opinion will be posted on the website of the United States Court of Federal Claims.** This means the opinion will be available to anyone with access to the internet. As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the published Decision’s inclusion of certain kinds of confidential information. Specifically, under 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). **If neither party files a motion for redaction within 14 days, the entire opinion will be posted on the website and available to the public in its current form.** *Id.*

<sup>2</sup> 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-10 to 34 (2012) (hereinafter “Vaccine Act” or “the Act”). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

that petitioner was entitled to compensation for a Table GBS following the receipt of the influenza vaccine he received on September 11, 2020. Ruling on Entitlement (ECF No. 22).

On September 9, 2024, respondent filed a Proffer on Award of Compensation, attached hereto as Appendix A. Respondent Proffer (ECF No. 56). Accompanying the proffer is a Funding Plan for the Life Care Plan. *Id.*, Appendix A. In the proffer, respondent represented that the petitioner agrees with the proffered award. *Id.* at 1-3. Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the proffer, the undersigned awards the following:

- A) A lump sum payment of \$166,332.19, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$11,833.00), lost earnings (\$22,985.00), pain and suffering (\$130,000.00), and past unreimbursable expenses (\$1,514.19) in the form of a check payable to petitioner.**
  
- B) An amount sufficient to purchase an annuity contract, subject to the conditions described in the proffer in section II.B.**

Accordingly, the Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with the foregoing.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Thomas L. Gowen**  
Thomas L. Gowen  
Special Master

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<sup>3</sup> Entry of judgment is expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).

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

BRUCE MATZNER,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 22-323V
	)	Special Master Gowen
	)	ECF
SECRETARY OF HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

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

On March 24, 2022, Bruce Matzner (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that he suffered Guillain-Barré Syndrome (“GBS”) resulting from an influenza (“flu”) vaccination he received on September 11, 2020. Petition (ECF No. 1). On December 26, 2022, the Secretary of Health and Human Services (“respondent”) filed his Rule 4(c) Report conceding that petitioner has satisfied the criteria set forth in the Vaccine Injury Table (“Table”) and the Qualifications and Aids to Interpretation (“QAI”) for a GBS Table injury. Respondent’s Report (ECF No. 19). Accordingly, on December 27, 2022, the Special Master issued a Ruling on Entitlement, finding that petitioner is entitled to vaccine compensation for GBS following the influenza vaccine he received on September 11, 2020. ECF No. 22.

**I. Items of Compensation**

A. Life Care Items

Respondent engaged life care planner Linda Curtis, RN, MS, CCM, CNLCP, and petitioner engaged life care planner Tresa Johnson, RN, BSN, CNLCP, to evaluate petitioner’s future GBS-related needs. All items of compensation identified in respondent’s life care plan are

supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for Bruce Matzner, attached hereto as Tab A. Respondent proffers that petitioner should be awarded all items of compensation set forth in respondent's life care plan and illustrated by the chart attached at Tab A. Petitioner agrees.

B. Lost Earnings

The parties agree that based upon the evidence of record, petitioner has suffered past loss of earnings as a result of his GBS. Therefore, respondent proffers that petitioner should be awarded lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Respondent proffers that the appropriate award for petitioner's past lost earnings is \$22,985.00. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that petitioner should be awarded \$130,000.00 in actual and projected pain and suffering. Petitioner agrees.

D. Past Unreimbursable Expenses

Evidence supplied by petitioner documents his expenditure of past unreimbursable expenses related to his GBS. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$1,514.19. Petitioner agrees.

**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 Special Master's decision and the Court's judgment award the following:<sup>1</sup>

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<sup>1</sup> 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.

A. A lump sum payment of \$166,332.19, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$11,833.00), lost earnings (\$22,985.00), pain and suffering (\$130,000.00), and past unreimbursable expenses (\$1,514.19) in the form of a check payable to petitioner.

B. An amount sufficient to purchase an annuity contract,<sup>2</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>3</sup> from which the annuity will be purchased.<sup>4</sup> 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, 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

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

<sup>3</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.

<sup>4</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.

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 he 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 petitioner'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: **\$166,332.19**
- B. An amount sufficient to purchase the annuity contract described above in section II.B.

Respectfully submitted,

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Principal Deputy Assistant Attorney General

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Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
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*s/Mallori B. Openchowski*  
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Dated: September 9, 2024



## Appendix A: Items of Compensation for Bruce Matzner

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1 2024	Compensation Year 2 2025	Compensation Years 3-4 2026-2027	Compensation Year 5 2028	Compensation Year 6 2029	Compensation Years 7-9 2030-2032	Compensation Year 10 2033	Compensation Years 11-Life 2034+Life
Scooter	4%									1,859.00	371.80
Scooter Maintenance	4%									148.72	148.72
Scooter Batteries	4%									87.20	87.20
Scooter Lift	4%									2,235.00	
Counseling	4%	*									
Life Alert	4%		M	1,380.96	1,182.96	1,182.96	1,182.96	1,182.96	1,182.96	1,182.96	1,182.96
Bathroom Renovation	4%			640.00							
Stair Lift	4%							14,125.00			
Pool Lift for Hot Tub Access	4%			4,695.88							
Attendant Care	4%		M				15,808.00	15,808.00	15,808.00	23,712.00	23,712.00
Lost Earnings				22,985.00							
Pain and Suffering				130,000.00							
Past Unreimbursable Expenses				1,514.19							
Annual Totals				166,332.19	4,894.30	4,814.30	20,898.97	34,793.73	20,668.73	32,902.65	29,180.45

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 (\$11,833.00), lost earnings (\$22,985.00), pain and suffering (\$130,000.00), and past unreimbursable expenses (\$1,514.19): \$166,332.19.

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.