

(II) THE TOTAL AMOUNT OF PAST MEDICAL EXPENSES INCURRED BUT NOT PAID BY OR ON BEHALF OF THE PLAINTIFF FOR WHICH THE PLAINTIFF OR ANOTHER PERSON ON BEHALF OF THE PLAINTIFF IS OBLIGATED TO PAY.

~~(2) THE VERDICT FOR PAST OR FUTURE LOSS OF EARNINGS SHALL EXCLUDE ANY AMOUNT FOR FEDERAL, STATE, OR LOCAL INCOME TAXES OR PAYROLL TAXES, INCLUDING SOCIAL SECURITY AND MEDICARE, THAT THE PLAINTIFF WOULD HAVE PAID ON THESE EARNINGS, DETERMINED AT THE TAX RATES IN EFFECT FOR THE PLAINTIFF AT THE TIME THE VERDICT IS ENTERED BE LIMITED TO 85% OF PAST OR FUTURE LOSS OF EARNINGS.~~

~~(3) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, THERE IS A REBUTTABLE PRESUMPTION THAT THE MEDICARE REIMBURSEMENT RATES IN EFFECT ON THE DATE OF THE VERDICT FOR THE LOCALITY IN WHICH THE CARE IS TO BE PROVIDED, ADJUSTED FOR INFLATION AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH, ARE FAIR AND REASONABLE AMOUNTS FOR FUTURE MEDICAL EXPENSES.~~

~~(H) IF ON THE DATE OF THE VERDICT, THE MEDICARE WAIVER UNDER § 1814(B) OF THE FEDERAL SOCIAL SECURITY ACT IS IN EFFECT, THERE IS A REBUTTABLE PRESUMPTION THAT THE RATES APPROVED BY THE HEALTH SERVICES COST REVIEW COMMISSION IN EFFECT ON THE DATE OF THE VERDICT FOR THE HOSPITAL FACILITY IN WHICH SERVICES ARE TO BE PROVIDED, ADJUSTED FOR INFLATION AS PROVIDED IN THE ANNUAL RATE UPDATES APPROVED BY THE HEALTH SERVICES COST REVIEW COMMISSION, ARE FAIR AND REASONABLE AMOUNTS FOR FUTURE MEDICAL EXPENSES FOR HOSPITAL FACILITY SERVICES.~~

~~(III) THERE IS A REBUTTABLE PRESUMPTION THAT THE STATEWIDE AVERAGE PAYMENT RATE FOR THE MEDICAL ASSISTANCE PROGRAM DETERMINED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN EFFECT ON THE DATE OF THE VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH, IS A FAIR AND REASONABLE AMOUNT FOR FUTURE MEDICAL EXPENSES FOR NURSING FACILITY SERVICES.~~

~~(IV) A VERDICT FOR FUTURE MEDICAL EXPENSES FOR WHICH THERE IS NO MEDICARE REIMBURSEMENT RATE, HOSPITAL FACILITY RATE, OR STATEWIDE AVERAGE PAYMENT RATE SHALL BE BASED ON ACTUAL COST ON THE DATE OF THE VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH.~~

~~(V) 1. FUTURE MEDICAL EXPENSES SHALL BE ADJUSTED FOR INFLATION FOR THE EXPENDITURE CATEGORY OF THE CONSUMER PRICE INDEX PUBLISHED BY THE BUREAU OF LABOR STATISTICS TO WHICH THE EXPENSE APPLIES.~~

~~2. THE ADJUSTMENT FOR INFLATION IN THIS PARAGRAPH SHALL BE BASED ON THE AVERAGE RATE OF INFLATION FOR THE 5 YEARS IMMEDIATELY PRECEDING THE AWARD OR VERDICT.~~