

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

***In re* FLINT WATER CASES**

**Civil Action No. 5:16-cv-10444-JEL-
(consolidated)**

Hon. Judith E. Levy

**NOTICE OF SPECIAL MASTER PROVIDING INTERPRETATIONS AND
GUIDANCE REGARDING CLAIM ELIGIBILITY UNDER PARTIAL
SETTLEMENT**

On November 10, 2021, the Court issued its *Opinion and Order Granting Final Approval Of A Partial Settlement, Granting Certification Of A Settlement Class, Granting Appointment Of Settlement Class Counsel [1794], Denying Objections, And Adopting The Report And Recommendation [2006]* (“Opinion and Final Approval Order”), -- F. Supp. 3d --, 2021 WL 5237198 (E.D. Mich. Nov. 10, 2021) (ECF No. 2008, PageID.69537–69714).

The Opinion and Final Approval Order approved the settlement reached between Plaintiffs and the Settling Defendants in the Amended Settlement Agreement (“ASA”) (ECF No. 1394-2, PageID.54120).¹ Pursuant to the ASA, the Special Master oversees various aspects of the settlement and her duties include,

¹ Unless otherwise defined herein, all capitalized terms herein have the same meaning set forth in the ASA.

inter alia, “(1) consulting with the Claims Administrator and making decisions regarding registration and participation; (2) considering and deciding, in a timely fashion, any appeals taken by participants ...; and (3) handling any disputes that arise involving the ASA.” Opinion and Final Approval Order, 2021 WL 5237198, at *6, ECF No. 2008 at PageID.69554 (citing ASA at PageID.54163–54174).

On January 20, 2022, the Court issued its *Order Regarding Settlement-Related Duties Of The Special Master*, ECF No. 2096, PageID.71973 (“Order”). By this Order, the Court amended its previous *Amended Order Appointing Special Master* (“Special Master Appointment Order”), ECF No. 544, PageID.16581-16590. The Court directed Special Master Deborah E. Greenspan to fulfill all of the duties of Special Master set forth in the ASA and specifically directed the Special Master to assist the Court in its oversight role by addressing issues of interpretation of Exhibit 8 to the ASA and the exhibits thereto and by providing direction to the Claims Administrator regarding questions of interpretation. Order, PageID.71975-71976. (Exhibit 8 to the ASA is the Flint Water Cases Qualified Settlement Fund Categories, Monetary Awards, and Required Proofs Grid, ECF No. 1319-2, PageID.40788, hereinafter “Settlement Grid”). The Special Master may also submit recommendations to the Court regarding interpretation matters. Order, PageID.71976.

The claims period under the ASA commenced on January 12, 2022. Since that time, the Special Master has received requests from the Claims Administrator and from counsel for claimants seeking clarification of certain provisions of the ASA and the Settlement Grid, and questions about the sufficiency of documentation submitted to support claims. This Notice sets forth guidance with respect to seven issues and questions.

1. Use of Blood Lead Level Information Provided By The State Of Michigan Department of Health and Human Services (“MDHHS”) To The Claims Administrator Pursuant To The Court’s *Stipulated Order Regarding Access To And Use Of Blood Level Test Data For Limited Purposes [1870]*, ECF No. 1929, PageID.67407 (August 9, 2021).

The database provided to the Claims Administrator by the MDHHS² contains the results of blood lead level tests and other information that was reported to the MDHHS by various medical providers (“BLL Database”). The database contains data compiled by the medical providers, including fields that specify the name of the individual whose blood lead test result is reported as well as the street address of that individual as of the date of the blood test. The database also provides the name and address of the testing facility. The Special Master has reviewed a sample of the address information on the database and found that in many cases, the address in the

² The State of Michigan MDHHS provided information that had been submitted to the State, as required by law, by facilities that conducted blood lead level tests during the Flint Water Crisis. The MDHHS compiles and reports on the information submitted to it but does not have any role in verifying it, conducting the tests, or collecting the identification and address information.

database for the individual who received the blood test matches the address listed on the registration form submitted to the Claims Administrator for that individual. Accordingly, a claimant may rely on the BLL Database as supporting documentation for purposes of proof of residence in Flint as of the date of the blood test provided that the reported address of the claimant is in Flint and is consistent with information provided by the claimant on the registration form or the claim form and in other supporting documents.

2. Compensation For Minors Who Claim A Cognitive Deficit.

The Settlement Grid includes compensation for minors who demonstrate a Cognitive Deficit as defined in the Settlement Grid. The proof requirements for a Cognitive Deficit require evaluation by certain persons including a neuropsychologist. Following is further guidance for these requirements:

- a. The Cognitive Deficit definition appears in Categories 2, 3, 10 and 17 in the Settlement Grid, PageID.40792, 40795, 40804-5, 40812-13. That definition states that to support a claim based on Cognitive Deficit, the claimant must submit a report. That report must include an evaluation by a team that includes a board-certified pediatrician and neuropsychologist. While the pediatrician must be board certified, the board certification requirement does not apply to the word “neuropsychologist”. An individual who has a doctorate in neuropsychology is not required to be board certified

in neuropsychology to conduct the tests necessary for the Cognitive Deficit evaluation.

- b. While the Settlement Grid specifies that the evaluation must be conducted by a team that includes a neuropsychologist, there may be some instances where a report may be acceptable where the team includes an individual who has the equivalent credentials, experience, and training of a PhD neuropsychologist but whose degree uses different nomenclature. Some universities do not offer a doctorate with the title of “neuropsychology” but offer training that provides the same level and type of expertise and skills. As an example, some universities offer PhD degrees in psychology with a concentration or specialization in neuropsychology. Thus, an individual whose education and training is equivalent to that of a neuropsychology PhD and who is qualified by training and experience to conduct and evaluate the tests required for purposes of the Cognitive Deficit definition may be accepted as part of the requisite evaluation team. To determine compliance with the Settlement Grid, the Claims Administrator shall obtain the credentials of the individuals who evaluated the claimant and prepared the report that is submitted in support of the Cognitive Deficit claim. In any case where the Claims Administrator is uncertain about whether the report complies with the Settlement Grid, and in any case where the

credentials of the evaluators do not include an individual with a PhD specifically in “neuropsychology”, the Claims Administrator shall seek guidance from the Special Master.

3. Eligibility Of Children *in utero* During July 2016

To be eligible for certain claim categories in the Settlement Grid, a claimant must have been exposed to Flint water for 21 days out of any 30-day period between April 25, 2014 and July 31, 2016. *See, e.g.*, Settlement Grid, PageID.40790, 40792-3, 40795-7, 40798-40799, 40800-40802. The question is whether any portion of the 21 days of “exposure” may occur while the child is *in utero*. The Settlement Grid defines the requirement of exposure: individuals meet the exposure requirement if they “resided, dwelled, or attended school or day care in Flint, or were otherwise exposed to Flint water.” Settlement Grid, PageID.40790, 40792-3, 40795-6, 40798-40799, 40800-40802. A child who was exposed to Flint water while *in utero* arguably is “otherwise exposed” to the water if in fact the child’s biological mother was herself exposed to and consuming Flint water while the child was *in utero*. Accordingly, the following guidance shall apply:

- a. A child who is born less than 21 days before July 31, 2016 (i.e. born between July 10 and July 31, 2016) meets the exposure requirement (of exposure to Flint water for 21 days during a 30 day period between April 25, 2014 and July 31, 2016) provided that: the combined period of time

during which the child was *in utero* and after birth is at least 21 days ending on or before July 31, 2016 and that (i) during the portion of the 21 day period after birth the child resided in Flint and was exposed to Flint water and (ii) the biological mother of the child resided in Flint and consumed Flint water while the child was *in utero*.

- b. A child who was *in utero* before July 31, 2016 but was born after July 31, 2016, may meet the requirement of exposure to Flint water between April 25, 2014 and July 31, 2016 if: (i) contemporaneous medical records demonstrate that the child was *in utero* at least 21 days before July 31, 2016, and (ii) the child's biological mother resided in Flint and consumed Flint water during that 21-day period.³

4. Use Of Tax Returns As Proof Of Residence In Flint.

- a. Tax return documents showing the taxpayer's residence in Flint at the time period relevant for the Settlement Grid category claimed may be used as supporting documents showing residence.
- b. Tax return documents showing the taxpayer's dependents may be used as supporting documents for the residence of the dependents provided that the tax return documents are for the period of time pertinent to the particular

³ The child's biological mother may demonstrate residence in Flint through any of the means accepted for proof of residence in the ASA.

Settlement Grid category for which the dependent seeks compensation and provided that the information is not inconsistent with other documents showing the address of the child (such as school or day care records, custody or guardianship orders, or medical records).

5. Use Of A Water Bill Or Information From The Water Company Customer List As Proof Of Residence In Flint.

- a. Both water bills and information from the water customer list may be used as proof of residence in Flint for purposes of the Settlement Grid provided that those documents show that the individual claimant received the bill at the service address in Flint.
- b. The above documents may be used to demonstrate proof of residence of a child who is a dependent of the individual who is named on the water bill or on the customer list as described above provided that (i) the birth certificate(s) show(s) that the individual named on the bill or customer list is a person who has submitted the claim form for the child as the next friend of the child (such as a parent, grandparent, aunt or uncle, sibling) and (ii) there is no documentation in the claim submission that shows that the child resided at a different location. *See also* paragraph 7(i) below.

6. Use Of Birth Certificate As An Identification Document.

A birth certificate may be used as proof of identification for both children and adults.

7. Acceptable Documents For Proof Of Residence Of Child.

The following documents may be used to demonstrate the child's residence in Flint provided that they show the child's address during the relevant time period:

- a. School records;
- b. Medical records;
- c. Tax returns;
- d. Day care records;
- e. Summer camp records;
- f. Documents that the IRS accepts for purposes of demonstrating the residence of a child such as school or childcare records, medical records, insurance documents, government benefits records;
- g. Custody orders showing the "next friend" having sole legal custody of the child coupled with documents showing the residence of the "next friend";
- h. Sworn statement from an unpaid day care provider coupled with proof of residence in Flint of that provider and sworn statement of parent or other adult who is responsible for custody and care of child documenting the presence of the child at the residence of the unpaid day care provider in Flint for the requisite 21 days the relevant time period, and;
- i. Birth certificate or chain of birth certificates showing the relationship of the child to a qualified "next friend" with whom the child resides coupled with

the sworn statement of the next friend documenting the presence of the child in the residence of the next friend.

Date: March 26, 2022

/s/ Deborah E. Greenspan
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CERTIFICATE OF SERVICE

I certify that on March 26, 2022, I electronically filed the foregoing document with the Clerk of the Court using the Court's ECF system, which will send notification of such filing to attorneys of record.

Dated: March 26, 2022

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