

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 10-767V

Filed: June 29, 2012

ARTHUR W. ASKEW,	)	
	)	NOT TO BE PUBLISHED
Petitioner,	)	
	)	
v.	)	Stipulation; influenza (flu) vaccine;
	)	transverse myelitis (TM)
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

Petitioner appears Pro se;  
Darryl R. Wishard, United States Dep't of Justice, Washington, D.C., for Respondent.

### DECISION<sup>1</sup>

LORD, Special Master.

On June 26, 2012, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case and a Stipulation on Costs.

Petitioner, Arthur Askew, alleges that he suffered injuries related to his receipt of the influenza ("flu") vaccine on October 9, 2007, which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Specifically, Petitioner alleges that as a result of receiving the flu vaccine he suffered from Transverse Myelitis ("TM"). Petitioner further alleges that he experienced the residual effects of this injury for more than six months. Petitioner seeks compensation related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that the flu vaccine either caused or significantly aggravated Petitioner's medical condition, including his TM, or any of his ongoing symptoms, and denies that he experienced the residual effects of his alleged vaccine injury for more than six months. Nonetheless, the parties have agreed informally to resolve this matter.

<sup>1</sup> In accordance with Vaccine Rule 18(b), a petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Rules of the United States Court of Federal Claims ("RCFC"), Appendix B, Vaccine Rule 18(b). Redactions ordered by the special master, if any, appear in the document as posted on the United States Court of Federal Claims' website.

The Court hereby ADOPTS the parties' said Stipulations, attached hereto as Appendix A and Appendix B, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioner is awarded:

- a. **A lump sum of \$4,222.40, in the form of a check payable to Petitioner,** which amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and
- b. **A lump sum of \$535.39 in the form of a check payable to Petitioner** for costs available under 42 U.S.C. § 300aa-15(e).

The Court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

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Dee Lord  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.



petitioner's medical condition, including his TM, or any of his ongoing symptoms, and denies that he experienced the residual effects of his alleged vaccine injury for more than six months.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of \$4,222.40 in the form of a check payable to petitioner.

The above amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. Petitioner represents that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

10. Payment made pursuant to paragraph 8 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. The parties further agree and stipulate that the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner, as contemplated by a strict

construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

12. In return for the payment described in paragraph 8, petitioner, in his individual capacity and on behalf of his heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions, causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the influenza vaccine administered on October 9, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about November 9, 2010, in the United States Court of Federal Claims as petition No. 10-767V.

13. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There

is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

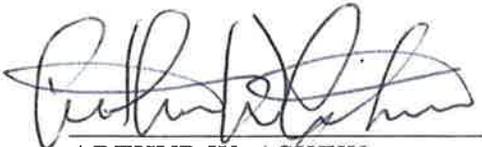
16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the vaccine either caused or significantly aggravated petitioner's medical condition, including his TM, or that petitioner experienced the residual effects of any alleged vaccine injury for more than six months.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

**END OF STIPULATION**

Respectfully submitted,

**PETITIONER *PRO SE*:**



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ARTHUR W. ASKEW

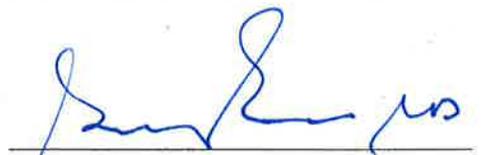
**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**



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MARK W. ROGERS  
Deputy Director  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE  
OF THE SECRETARY OF HEALTH  
AND HUMAN SERVICES:**



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GEOFFREY EVANS, M.D.  
Director, Division of  
Vaccine Injury Compensation  
Healthcare Systems Bureau  
U.S. Department of Health  
and Human Services  
5600 Fishers Lane  
Parklawn Building, Mail Stop 11C-26  
Rockville, MD 20857

**ATTORNEY OF RECORD FOR  
RESPONDENT:**



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DARRYL R. WISHARD  
Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
(202) 616-4357

Dated: 6/26/12

**CERTIFICATE OF SERVICE**

I certify that on this 26<sup>th</sup> day of June, 2012, the original of the foregoing was filed in the U.S. Court of Federal Claims via personal service, and that a true and correct copy was served via first-class mail, postage pre-paid, upon:

Arthur W. Askew  
4440 Bradford Circle  
Myrtle Beach SC 29588



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Darryl R. Wishard  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Torts Branch  
P.O. Box 146, Ben Franklin Station  
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Direct dial: (202) 616-4357  
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ORIGINAL

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OFFICE OF SPECIAL MASTERS

_____	)	
ARTHUR W. ASKEW,	)	
	)	
Petitioner,	)	No. 10-767V
v.	)	Special Master Lord
	)	
SECRETARY OF HEALTH	)	
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
_____	)	

FILED  
JUN 26 2012  
OSM  
U.S. COURT OF  
FEDERAL CLAIMS

**STIPULATION ON COSTS**

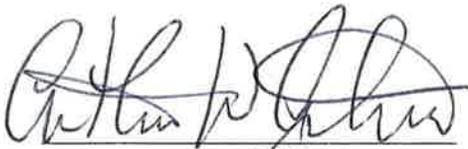
The parties hereby stipulate to the following matters:

1. Petitioner, Arthur W. Askew, *pro se*, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34.
2. The parties reached a litigative risk settlement of the petition via a stipulation.
3. Because compensation will be granted, reasonable costs are available to petitioner under Section 15(e) of the Vaccine Act, 42 U.S.C. § 300aa-15(e).
4. Petitioner incurred \$535.39 in documented costs for prosecution of the petition.
5. Respondent has reviewed petitioner's documented costs and does not object to the payment of \$535.39 in costs to petitioner.

**END OF STIPULATION**

Respectfully submitted,

**PETITIONER *PRO SE*:**



ARTHUR W. ASKEW

**ATTORNEY OF RECORD FOR RESPONDENT:**



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Torts Branch  
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