

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

LEANDRA ROSE ROMERO,

*

Petitioner,

*

No. 10-846V

Special Master Christian J. Moran

*

v.

*

Filed: September 10, 2012

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

Stipulation; human papillomavirus

vaccine; varicella vaccine;

Respondent.

*

neurological deficits.

*

UNPUBLISHED DECISION¹

Elizabeth M. Muldowney, Rawls, McNelis and Mitchell, P.C., Richmond, VA, for Petitioner;
Voris E. Johnson, U.S. Department of Justice, Washington, D.C., for Respondent.

On September 7, 2012, the parties filed a joint stipulation concerning the petition for compensation filed by Leandra Rose Romero on December 9, 2010. In her petition, she alleged that the human papillomavirus (“HPV”) and varicella vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which she received on December 14, 2007, caused her to suffer “significant, permanent, residual, neurological deficits,” the effects of which lasted for more than six months.

Respondent denies that either the HPV or varicella vaccine caused petitioner’s alleged adverse reaction and residual effects, or any other injury.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$76,781.63 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and**
- B. A lump sum payment of \$38,218.37, which amount represents compensation for reimbursement of the State of California Department of Health Care Services lien, in the form of a check payable jointly to petitioner and the Department of Health Care Services, Recovery Branch – MS 4720, P.O. Box 997421, Sacramento, CA 95899-7421, Attn: Kevin Issertell, Collection Representative, with reference to “DHCS Account No. C94700648A-001.”**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 10-846V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.
IT IS SO ORDERED.

s/Christian J. Moran

Christian J. Moran
Special Master

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

_____)	
LEANDRA ROSE ROMERO,)	
)	
Petitioner,)	
)	
v.)	No. 10-846V (ECF)
)	Special Master Moran
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Leandra Rose Romero (“petitioner”) filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the “Vaccine Program”).¹ The petition seeks compensation for injuries allegedly sustained following petitioner’s receipt of human papillomavirus (“HPV”) and varicella vaccines, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a).
2. Petitioner received HPV and varicella vaccines on December 14, 2007.
3. The vaccines were administered within the United States.
4. Petitioner alleges that she subsequently suffered “significant, permanent, residual, neurological deficits,” which petitioner alleges were caused-in-fact by her receipt of the HPV and varicella vaccines. Petitioner further alleges that she experienced the residual effects of her

¹ The petition was originally filed by petitioner’s mother, Adriana Romero, as petitioner’s parent and legal guardian, while petitioner was still a minor. Petitioner reached the age of majority on July 12, 2011. The petition was amended by Order dated July 30, 2012, to reflect that petitioner is now the proper claimant.

injury for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.

6. Respondent denies that either the HPV or varicella vaccine caused petitioner's alleged adverse reaction and residual effects, or any other injury.

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 payments:

- a. A lump sum of \$76,781.63 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and,
- b. A lump sum of \$38,218.37, which amount represents compensation for reimbursement of the State of California Department of Health Care Services lien, in the form of a check payable jointly to petitioner and the Department of Health Care Services, Recovery Branch – MS 4720, P.O. Box 997421, Sacramento, CA 95899-7421, Attn: Kevin Issertell, Collection Representative, with reference to "DHCS Account No. C94700648A-001."

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent 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.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, 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).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of herself, her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions or 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 HPV and varicella vaccines

administered on December 14, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about December 9, 2010, in the United States Court of Federal Claims as petition No. 10-846V.

14. 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.

15. 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.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National 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.

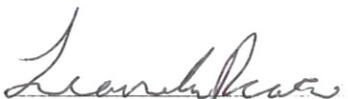
17. This Stipulation shall not be construed as an admission by the United States of America or the Secretary of Health and Human Services that petitioner's alleged injury and residual effects, or any other injury, were caused-in-fact by the HPV or varicella vaccines.

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

END OF STIPULATION

Respectfully submitted.

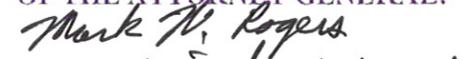
PETITIONER:


LEANDRA ROSE ROMERO

ATTORNEY OF RECORD FOR
PETITIONER:


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Dated: 9/7/12