

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 11-79V
Filed: October 2, 2012**

KAREN ANNE DADDONA, *
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 * Petitioner, * Stipulation; Brachial Neuritis;
 * v. * Entitlement; Attorney Fees and Costs
 *
 *
 * SECRETARY OF HEALTH *
 * AND HUMAN SERVICES, *
 *
 * Respondent. *

DECISION ON JOINT STIPULATION¹

Vowell, Special Master:

Karen Anne Daddona [“petitioner”] filed a petition for compensation under the National Vaccine Injury Compensation Program² on February 7, 2011. Petitioner alleges that she developed brachial neuritis as a result of a tetanus-diphtheria-acellular-pertussis [“Tdap”] immunization she received on November 20, 2009, and she further alleges that she experienced residual effects of this injury for more than six months. See Stipulation, filed October 2, 2012, at ¶¶ 2, 4. Respondent acknowledges that “[t]here is not a preponderance of evidence demonstrating that petitioner’s condition is due to a factor unrelated to her [Tdap immunization],” and, furthermore, that petitioner is entitled to compensation under the terms of the Vaccine Program. Stipulation at ¶ 6, 7; see also Respondent’s Rule 4(c) Report, filed Apr. 12, 2012, at 3. In view of respondent’s concession, I find petitioner is entitled to compensation.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

On October 2, 2012, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms. Respondent agrees to pay petitioner a lump sum of \$80,000.00. **Accordingly, I hereby award the total of \$80,000.00³ in the form of a check payable to petitioner, Karen Anne Daddona, and on the terms set forth in the attached stipulation.**

Additionally, the October 2, 2012 joint stipulation addressed attorney fees and costs.

I find that this petition was brought in good faith and that there existed a reasonable basis for the claim. Therefore, an award for fees and costs is appropriate, pursuant to 42 U.S.C. §§ 300aa-15(b) and (e)(1). Further, the proposed amount seems reasonable and appropriate. **Accordingly, I hereby award the total of \$6,505.29⁴ in the form of a check payable jointly to petitioner, Karen Anne Daddona, and petitioner's counsel of record, Mindy Michaels Roth, for petitioner's attorneys' fees and costs.**

In lieu of filing a separate General Order #9 statement, the stipulation indicates that petitioner incurred **\$436.40** in litigation costs. Stipulation at ¶ 8. **This sum, representing a portion of the \$6,505.29 awarded, shall be paid to petitioner by her attorney as reimbursement for petitioner's out-of-pocket expenses.**

In the absence of a timely-filed motion for review filed pursuant to Appendix B of the Rules of the U.S. Court of Federal Claims, the clerk of the court shall enter judgment in accordance herewith.⁵

IT IS SO ORDERED.

s/ Denise K. Vowell
Denise K. Vowell
Special Master

³ This amount represents compensation for all damages that would be available under § 300aa-15(a).

⁴ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See generally *Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir.1991).

⁵ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
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KAREN ANNE DADDONA,

Petitioner,

v.

**SECRETARY OF HEALTH
AND HUMAN SERVICES,**

Respondent.

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**No. 11-079V
SPECIAL MASTER
DENISE VOWELL
ECF**

STIPULATION

The parties hereby stipulate to the following matters:

1. 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"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of a tetanus-diphtheria-acellular-pertussis ("Tdap") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received a Tdap immunization on November 20, 2009.
3. The vaccine was administered within the United States.
4. Petitioner developed the first symptom or manifestation of onset of brachial neuritis within the Table time period of two to twenty-eight days following the administration of her vaccination, and she has experienced the residual effects of this injury for more than six months.

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

6. There is not a preponderance of the evidence demonstrating that petitioner's condition is due to a factor unrelated to the administration of her November 25, 2009 vaccination.

7. Accordingly, petitioner is entitled to compensation under the terms of the Vaccine Program. Therefore, 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. A lump sum of \$80,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages available under 42 U.S.C. § 300aa-15(a); and
- b. A lump sum of \$6,505.29 in the form of a check payable jointly to petitioner and petitioner's attorney, Mindy Michaels Roth. For attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, \$436.40 in out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

9. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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 entities that provide health services on a pre-paid basis.

10. Payments 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 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).

12. In return for the payments described in paragraph 8, petitioner, in her individual capacity, and on behalf of her 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 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 Tdap vaccination administered on November 20, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about February 7, 2011, in the United States Court of Federal Claims as petition No. 11-79V.

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.

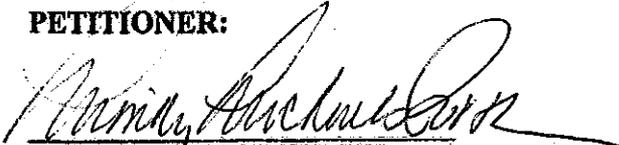
14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity

Respectfully submitted,

PETITIONER:


KAREN ANNE DADDONA

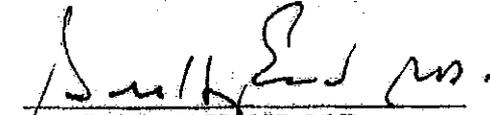
**ATTORNEY OF RECORD FOR
PETITIONER:**


MINDY MICHAELS ROTH
Britcher, Leone & Roth
175 Rock Road
Glen Rock, NJ 07452
(201) 444-1644

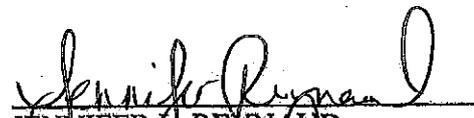
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


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:**


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:**


JENNIFER U. REYNAUD
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 305-1586

Dated: October 2, 2012