

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-497V

Filed: July 19, 2012

EUGENE R. LUZADER, SR.,

*

NOT TO BE PUBLISHED

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Petitioner,

*

Stipulation; tetanus-diphtheria (Td)

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vaccine; Guillain-Barré Syndrome (GBS)

v.

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*

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

*

Respondent.

*

*

Jeffrey A. Golvash, Brennan, Robins & Daley, P.C., for Petitioner

Lisa A. Watts, United States Dep't of Justice, Washington, D.C., for Respondent

DECISION¹

Zane, Special Master.

On July 19, 2012, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleged that he suffered Guillain-Barré Syndrome (“GBS”), as a result of his receipt of the tetanus-diphtheria (“Td”) vaccine, which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a), and which he received on or about May 10, 2010. Petitioner also represents that there have been no prior awards or settlement of a civil action for these damages. Petitioner seeks compensation related to his injuries pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

¹ The special master intends to post this decision on the website for the United States Court of Federal Claims in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. As provided by Vaccine Rule 18(b), each party has 14 days to file a motion requesting the redaction from this decision of any such alleged material. In the absence of a timely request, which includes a proposed redacted decision, the entire document will be made publicly available.

Respondent denies that the Td vaccine caused Petitioner to suffer GBS, or any other injury, and further denies that Petitioner's current disabilities are sequelae of a vaccine-related injury. Nonetheless, the parties have agreed informally to resolve this matter. *See* Stipulation, Appendix A hereto.

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

- a. **a lump sum of \$124,372.10, 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);
- b. **a lump sum of \$17,566.24, in the form of a check payable jointly to Petitioner and Petitioner's attorney, Jeffrey A. Golvash,** for attorney's fees and costs available under 42 U.S.C. §300aa-15(e). In accordance with General Order #9, Petitioner represents that all litigation costs were paid by Petitioner's attorney and that Petitioner did not personally incur any costs in proceeding on the petition.

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.²

IT IS SO ORDERED.

s/Daria J. Zane
Daria J. Zane
Special Master

² This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. 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.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

EUGENE R. LUZADER, SR.,)	
)	<u>ECF</u>
Petitioner,)	
v.)	No. 11-497V
)	Special Master
SECRETARY OF HEALTH)	Daria J. Zane
AND HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Eugene R. Luzader, Sr. ("petitioner") filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to his receipt of tetanus-diphtheria ("Td") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received the Td vaccine on May 10, 2010.
3. The vaccine was administered within the United States.
4. Petitioner alleges that he suffered Guillain-Barré Syndrome ("GBS") which was caused-in-fact by receipt of the Td vaccine. Petitioner further alleges that he suffered 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 as a result of his condition.
6. Respondent denies that the Td vaccine caused petitioner to suffer GBS, or any other

injury, and further denies that petitioner's current disabilities are sequelae of a vaccine-related 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 \$124,372.10 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 \$17,566.24 in the form of a check payable jointly to petitioner and petitioner's attorney, Jeffrey A. Golvash, for attorney's fees and costs available under 42 U.S.C. § 300aa-15(e); and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.**

9. Petitioner and his 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, and past unreimbursable expenses, 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 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 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 Td vaccine administered to him on May 10, 2010, as alleged in a petition for vaccine compensation filed on or about August 1, 2011, in the United States Court of Federal Claims as petition No. 11-497V.

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 Td vaccine administered to petitioner on May 10, 2010, caused his GBS, or any other injury, or that his current disabilities are sequelae of his alleged vaccine-related injuries.

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

END OF STIPULATION

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Respectfully submitted,

PETITIONER:


EUGENE R. LUZADER, SR.

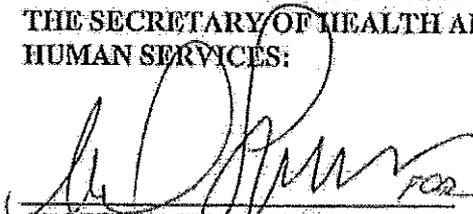
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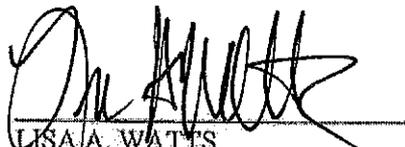
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Dated: 7-19-2012