

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

\*\*\*\*\*

KIMBERLY L. QUILLEN-MILLER, \*

Petitioner, \*

v. \*

SECRETARY OF HEALTH AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

No. 07-666V  
Special Master Christian J. Moran

Filed: January 30, 2009

Stipulation; tetanus-diphtheria-acellular-pertussis vaccine; significant aggravation; adhesive capsulitis.

UNPUBLISHED DECISION<sup>1</sup>

David E. Marmelstein, Esq., Enfield, C.T., for Petitioner;  
Ryan D. Pyles, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On January 30, 2009, the parties filed a joint stipulation concerning the petition for compensation filed by Kimberly Quillen-Miller on September 11, 2007. In her petition, Ms. Quillen-Miller alleged that the tetanus-diphtheria-acellular-pertussis (Tdap) vaccine, which is contained in the Vaccine Injury Table, 42 C.F.R. §100.3 (a), and which Ms. Quillen-Miller received on September 8, 2006, either caused or significantly aggravated adhesive capsulitis, otherwise known as “frozen shoulder.”

---

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, 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. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Respondent denies that the Tdap vaccine caused and/or significantly aggravated Ms. Quillen-Miller's adhesive capsulitis.

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 awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

1. **A lump sum payment of \$40,000.00 in the form of a check payable to the petitioner.** This amount represents compensation for all damages that would be available pursuant to 42 U.S.C. § 300aa-15(a).
2. **A lump sum payment of \$200.69,** which amount represents compensation for reimbursement of the state's Medicaid lien, **in the form of a check payable jointly to petitioner and EDS/TPL, 950 North Meridian St., Suite 1150, Indianapolis, IN, 46204, ATTN: Sandra Oakes;** and
3. **A lump sum payment of \$901.15,** which amount represents compensation for reimbursement of the state's Medicaid lien, **in the form of a check payable jointly to petitioner and Healthcare Recoveries, 9390 Bunsen Parkway, Louisville, KY 40220, ATTN: Donna Adams.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 07-666V according to this decision and the attached stipulation.

Any questions may be directed to Francina Segbefia 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

KIMBERLY L. QUILLEN-MILLER,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 07-666V
	)	Special Master
	)	Christian J. Moran
SECRETARY OF HEALTH AND HUMAN	)	
SERVICES,	)	
	)	
Respondent.	)	
	)	
	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner Kimberly Quillen-Miller 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 Ms. Quillen-Miller'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 vaccine on or about September 8, 2006.

3. The vaccine was administered within the United States.

4. Petitioner alleges that the Tdap vaccine either caused or significantly aggravated adhesive capsulitis, otherwise known as "frozen shoulder."

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

6. Respondent denies that Tdap vaccine caused and/or significantly aggravated Kimberly Quillen-Miller's adhesive capsulitis.

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:

(1) A lump sum of \$40,000.00 in the form of a check payable to petitioner;

(2) A lump sum of \$200.69, which amount represents compensation for reimbursement of the state's Medicaid lien, in the form of a check payable jointly to petitioner and EDS/TPL, 950 North Meridian St., Suite 1150, Indianapolis, IN 46204, ATTN: Sandra Oakes; and

(3) A lump sum of \$901.15, which amount represents compensation for reimbursement of the state's Medicaid lien, in the form of a check payable jointly to petitioner and Healthcare Recoveries, 9390 Bunsen Parkway, Louisville, KY 40220, ATTN: Donna Adams.

The amounts listed in this the Eighth paragraph of this Stipulation

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

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. 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.

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 paragraphs 8 and 9, petitioner does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses

and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the Tdap vaccine administered on or about September 8, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about September 11, 2007, in the United States Court of Federal Claims as petition No. 07-666V.

13. If petitioner should die prior to receiving the payments described in paragraph 8, this agreement shall be considered 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 settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. 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.

16. All rights and obligations of petitioner hereunder shall

apply equally to petitioner's successors and assigns.

END OF STIPULATION

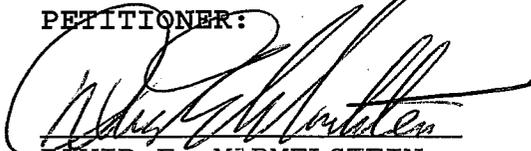
/

Respectfully submitted,

**PETITIONER:**

  
KIMBERLY L. QUILLEN-MILLER

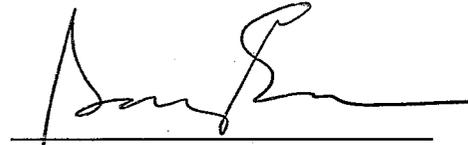
**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
DAVID E. MARMELSTEIN  
146 High St.  
Enfield, CT 06082  
(860) 698-9507

**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
VINCENT J. MATANOSKI  
Acting Deputy Director  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 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, Stop 11C-26  
Rockville, MD 20857

**ATTORNEY OF RECORD FOR  
RESPONDENT:**

  
RYAN D. PYLES  
Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
(202) 616-9847

Dated: January 30, 2009