

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-0520V

Filed: 23 March 2010

* * * * *
CLAYTON BROWN, *
*
Petitioner, *
*
v. *
*
SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
*
Respondent. *
* * * * *

Stephen Seidner, Esq., Seidner, Rosenfeld & Guttentag, Babylon, New York, for Petitioner;
Glenn Alexander MacLeod, Esq., United States Department of Justice, Washington, District of
Columbia, for Respondent.

UNPUBLISHED DECISION¹

ABELL, Special Master.

On 26 February 2010, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Clayton Brown, Petitioner, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

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 Diphtheria-Tetanus-acellular Pertussis ("DTaP") vaccination, which vaccine is included on the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).

2. Petitioner received a DTaP immunization on 24 May 2007..

¹ Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

3. The vaccine was administered within the United States.

4. Petitioner alleges that he sustained brachial neuritis as a consequence of his DTaP immunization.

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 Petitioner suffered an injury actually caused by his DTaP vaccination, and denies that his current disabilities are sequelae of his alleged 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 [Decision].

8. As soon as practicable after an entry of judgment reflecting [this Decision], 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 [shall] issue the following compensation payments:

a. a lump sum of **\$150,000.00** in the form of a check payable to Petitioner[, which] amount, plus the amount in sub-paragraph b below, represents compensation for damages that would be available under 42 U.S.C. § 300aa-15(a); and

b. a lump sum of **\$3,768.47** in the form of a check payable jointly to Petitioner and

Suffolk County Department of Social Services (Attn. Nancy Anders),
Assets and Resources
P.O. Box 18100
Hauppauge, New York 11788

representing compensation for satisfaction of the State of New York's Medicaid lien resulting from payments made to or on behalf of Petitioner.

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 Undersigned to award reasonable attorneys' fees and costs incurred in proceeding upon this Petition.

10. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this [Decision] [shall] 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 attorney's fees, litigation costs, and satisfaction of the state's Medicaid lien, the money provided pursuant to this [Decision] [shall] 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, on behalf of himself, and his heirs, executors, administrators, successors or assigns, 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 DTaP vaccination administered on 24 May 2007, as alleged in a petition for vaccine compensation filed on 16 July 2008, in the United States Court of Federal Claims as petition No. 08-0520V.

13. If Petitioner should die prior to receiving the payment described in paragraph 8, [the Stipulation] shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

14. [If the undersigned Special Master does not issue a Decision in complete conformity with the terms of the Stipulation between the parties, or in the event the Court of Federal Claims does not enter judgment in conformity with a decision that is in complete conformity with the terms of the Stipulation between the parties,] then the parties' settlement and their Stipulation shall be null and void at the discretion of either party.

15. This [Decision] expresses a full and complete 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.

16. All rights and obligations of Petitioner hereunder shall apply equally to Petitioner's successors and assigns.

I find this conclusion reasonable, just and proper, and adopt these provisions as the Decision of this Court in awarding damages. Therefore, in the absence of the filing of a motion for review, filed pursuant to Vaccine Rule 23 within 30 days of this date, **the clerk shall forthwith enter judgment** in accordance herewith.

IT IS SO ORDERED.

Richard B. Abell
Special Master