

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
E-Filed: July 31, 2012

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DESSA STABOLESKI,	*	UNPUBLISHED
	*	
Petitioner,	*	No. 10-549V
	*	
v.	*	Chief Special Master
	*	Campbell-Smith
	*	
SECRETARY OF THE	*	Joint Stipulation on Damages;
DEPARTMENT OF	*	Trivalent Influenza (“Flu”) Vaccine;
HEALTH AND HUMAN SERVICES,	*	Guillain-Barré Syndrome (“GBS”).
	*	
Respondent.	*	
	*	
* * * * *	*	

Isaiah R. Kalinowski, Maglio, Christopher & Toale, P.A., Sarasota, FL, for petitioner.

Glenn A. MacLeod, U.S. Dep’t of Justice, Washington, DC, for respondent.

DECISION¹

On August 16, 2010, Dessa Staboleski (“petitioner”) filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“Vaccine

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends 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, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. Id.

Program”).²

Petitioner alleges that as a result of her receipt of a trivalent influenza (“flu”) vaccine on October 20, 2009, she thereafter suffered from Guillain-Barré syndrome (“GBS”) and the residual effects of his injury for more than six months. Pet. at 1-2.

Respondent denies that the flu vaccine caused petitioner to suffer GBS, any other injury, or her current condition. Stip. at ¶ 6.

Nevertheless, on July 31, 2012, counsel for the parties filed a joint stipulation, which is attached to this decision, stating that a decision should be entered awarding compensation. The parties stipulated that petitioner should receive the following compensation payments:

- A **lump sum payment** of **\$4,393.03**, representing compensation for satisfaction of the Commonwealth of Pennsylvania’s Medicaid lien, in the form of a check payable jointly to petitioner and

Commonwealth of Pennsylvania
Bureau of Program Integrity
Division of Third Party Liability
Recovery Section
Attn: Elizabeth D. James
P.O. Box 8486
Harrisburg, PA 17105-8486
RE: ID# 960-136-282.

- A **lump sum payment** of **\$150,000.00**, representing compensation for all other damages that would be available under 42 U.S.C. §300aa-15(a), in the form of a check payable to petitioner.³

Stip. at ¶ 8.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (“Vaccine Act” or “Act”). All citations in this decision to individual sections of the Act are to 42 U.S.C.A. § 300aa.

³ The parties further stipulated that they had not yet reached an agreement with respect to attorneys’ fees and costs. Stip. at ¶ 9.

The undersigned finds the stipulation reasonable, adopts it as the decision of the court on damages, and approves the requested amount for petitioner's compensation.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.⁴

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia Campbell-Smith
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

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

DESSA STABOLESKI,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 10-549V
CHIEF SPECIAL MASTER
PATRICIA CAMPBELL-SMITH

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 the trivalent influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).

2. Petitioner received a flu immunization on or about October 20, 2009.

3. The vaccine was administered within the United States.

4. Petitioner claims that she suffered Guillain-Barre Syndrome ("GBS") as a result of the October 20, 2009 flu immunization, and further alleges that she experienced 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. Respondent denies that the flu vaccine caused petitioner to suffer GBS or any other injury, and further denies that petitioner's current disabilities are a 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 \$4,393.03 in the form of a check payable jointly to petitioner and

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representing compensation for satisfaction of the Commonwealth of Pennsylvania's Medicaid lien resulting from payments made to or on behalf of Dessa Staboleski; and

- b. A lump sum of \$150,000.00 in the form of a check payable to petitioner, representing compensation for all other 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. 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.

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 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).

13. In return for the payments described in paragraphs 8 and 9, 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 flu vaccination administered on or about October 20, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about August 16, 2010, in the United States Court of Federal Claims as petition No. 10-549V.

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, 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. 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused petitioner to suffer GBS or any other injury.

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

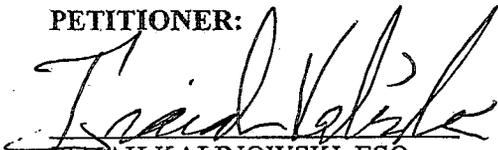
END OF STIPULATION

Respectfully submitted,

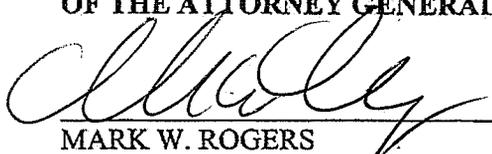
PETITIONER:


DESSA STABOLESKI

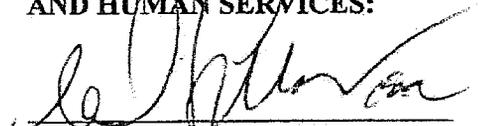
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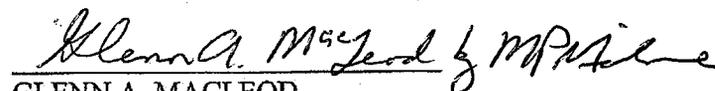
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Dated: July 31, 2012