

**In the United States Court of Federal Claims**

**OFFICE OF SPECIAL MASTERS**

**No. 11-251V**

(E-Filed: January 9, 2013)

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NATALIE S. WAIT HIEBERT,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

\* \* \* \* \*

\* UNPUBLISHED  
\*  
\* Chief Special Master  
\* Campbell-Smith  
\*  
\* DTap/Tdap Vaccine; Urticarial and  
\* Angioedema Injuries; Damages;  
\* Stipulation  
\*  
\*  
\*

Lisa A Roquemore, Irvine, CA, for petitioner

Julia W. McNerny, Washington, DC, for respondent

**DECISION AWARDING DAMAGES<sup>1</sup>**

On April 22, 2011, petitioner, Natalie S. Wait Hiebert, filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Vaccine Program”) alleging that she suffered certain injuries as a result of receiving a

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<sup>1</sup> 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, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). 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.

vaccination.<sup>2</sup> Among the injuries petitioner alleged she suffered as a result of receiving a DTap/Tdap vaccine were urticarial (hives) and angioedema (swelling).

Respondent denies that Natalie's urticarial, angioedema, and/or any other injury was caused by her receipt of the DTaP/Tdap vaccine. Nonetheless, both parties, while maintaining their above stated positions, agreed in a Stipulation filed January 7, 2013, ("Stipulation") that the issues before them can be settled and that a decision should be entered awarding petitioner compensation.

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:

- a. A lump sum of \$650,000.00, which amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a), except as set forth in paragraph 8.b., in the form of a check payable to petitioner;
- b. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased.<sup>3</sup>

Stipulation ¶ 8.

The undersigned 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 is directed to enter judgment herewith.<sup>4</sup>

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<sup>2</sup> 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.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

<sup>3</sup> The Stipulation provided by the parties has been attached to the end of this decision.

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

**IT IS SO ORDERED.**

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

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

NATALIE S. WAIT HIEBERT,	)	
	)	
Petitioner,	)	
v.	)	
SECRETARY OF HEALTH	)	No. 11-251V
AND HUMAN SERVICES	)	Chief Special Master
	)	Campbell-Smith
Respondent.	)	ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Natalie S. Wait Hiebert, 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 diphtheria-tetanus-acellular pertussis ("DTaP")<sup>1</sup> vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received her DTaP/Tdap immunization on or about June 8, 2010.
3. The vaccination was administered within the United States.
4. Petitioner alleges that she sustained the first symptom or manifestation of the onset of urticaria ("hives"), angioedema ("swelling"), and other adverse injuries caused by the vaccine. Petitioner further alleges that she developed adverse physical, neurological, psychological and immunological injuries as sequelae and that she experienced the residual effects of these injuries

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<sup>1</sup> Petitioner amended her petition on May 11, 2011 but did not amend the vaccination. Records confirm that petitioner received a tetanus-diphtheria-acellular pertussis ("Tdap") vaccination.

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 petitioner suffered the onset of urticaria/hives, angioedema/swelling or any other adverse injury as the result of her June 8, 2010, DTaP/Tdap vaccination and denies that the DTaP/Tdap vaccine caused her urticaria/hives, angioedema/swelling and current disabilities.

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 \$650,000.00, which amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a), except as set forth in paragraph 8.b., in the form of a check payable to petitioner;
- b. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;

- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of petitioner, Natalie S. Wait Hiebert, pursuant to which the Life Insurance Company will agree to make payments periodically to Natalie S. Wait Hiebert for all remaining damages that would be available under 42 U.S.C. §300aa-15(a), as follows:

- a. Beginning as soon as practicable after the date of judgment, \$1,961.75 per month for life only.

The payments provided for in this paragraph 10 shall be made as set forth above. Petitioner will receive annuity payments from the life insurance company only so long as Natalie S. Wait Hiebert is alive at the time that a particular payment is due. Written notice to the Secretary of Health and Human Services and to the Life Insurance Company shall be provided within twenty (20) days of Natalie S. Wait Hiebert's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and

Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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.

13. 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.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. 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 either immediately or as part of the annuity contract, will be used solely for petitioner's benefit 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).

16. In return for the payments described in paragraphs 8 and 12, petitioner, in her individual capacity, 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. § 300 aa-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 DTaP/Tdap vaccination administered on or about June 8, 2010, as alleged by petitioner in a petition for vaccine compensation filed on April 22, 1011, and as amended on May 11, 2011, in the United States Court of Federal Claims as petition No. 11-251V.

17. 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.

18. 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.

19. 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 12 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, 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.

20. Petitioner hereby authorizes respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

21. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that petitioner suffered the onset of urticaria/hives, angioedema/swelling or any other adverse injury as the result of her June 8, 2010, DTaP/Tdap vaccination and denies that the DTaP/Tdap vaccine caused her urticaria/hives, angioedema/swelling and current disabilities.

22. 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:

  
NATALIE S. WAIT HIEBERT

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Dated: 1/7/13