

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: May 21, 2008)

DO NOT PUBLISH

BESSIE I. MCGARVEY,)	
)	
Petitioner,)	
)	
v.)	No. 07-0622V
)	Influenza Vaccine; Miller-Fisher
SECRETARY OF)	Variant Guillain-Barré Syndrome;
HEALTH AND HUMAN SERVICES,)	Stipulation
)	
Respondent.)	

DECISION DIRECTING ENTRY OF JUDGMENT¹

Petitioner, Bessie I. McGarvey (Ms. McGarvey), seeks compensation under the National Vaccine Injury Compensation Program (Program).² Ms. McGarvey filed a Program petition on August 22, 2007. She alleges that she suffers “Fisher-variant Guillain-Barré” that is related to an influenza vaccination that she received on October 6, 2006. Petition (Pet.) at 2.

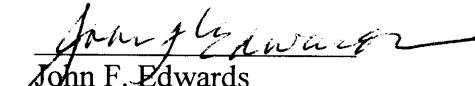
Respondent denies that Ms. McGarvey sustained a vaccine-related injury. *See, e.g.*, Stipulation (Stipulation), filed May 15, 2008, ¶ 6. Nevertheless, on May 15, 2008, the parties filed a Stipulation. *See* Stipulation. The special master has reviewed thoroughly the Stipulation. He adopts completely the Stipulation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the Stipulation in Ms.

¹ 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 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” will be available to the public. *Id.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

McGarvey's favor. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), Ms. McGarvey may expedite payment by filing an election to accept the judgment.

The clerk of court shall send Ms. McGarvey's copy of this decision to Ms. McGarvey by overnight express delivery.


John F. Edwards
Special Master

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

BESSIE I. MCGARVEY,)
)
Petitioner,)
)
v.)
)
SECRETARY OF HEALTH AND HUMAN)
SERVICES,)
)
Respondent.)
_____)

No. 07-622V
Special Master
John F. Edwards

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STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner Bessie I. McGarvey 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. McGarvey's receipt of a trivalent influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(c); 42 C.F.R. § 100.3 (a) (XIV).

2. Petitioner received a trivalent influenza vaccine on October 6, 2006.

3. The vaccine was administered within the United States.

4. Petitioner alleges that the trivalent influenza vaccine caused Miller Fisher variant Guillain-Barré Syndrome.

5. Petitioner represents that there has been no prior award or

settlement of a civil action for damages on behalf of Bessie I. McGarvey as a result of her condition.

6. Respondent denies that influenza vaccination is the cause of Bessie McGarvey's alleged injury or any other 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 payment:

A lump sum of **\$55,000.00** 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).

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 trivalent influenza vaccine administered on October 6, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about August 22, 2007, in the United States Court of Federal Claims as petition No. 07-622V.

13. If petitioner should die prior to receiving the payment 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 null and void 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

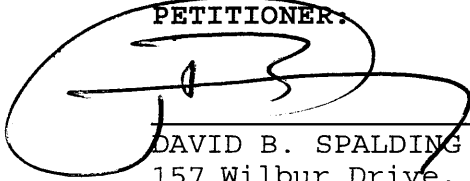
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Respectfully submitted,

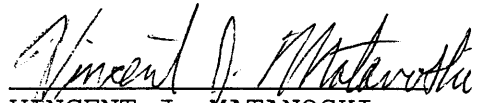
PETITIONER:


BESSIE I. MCGARVEY

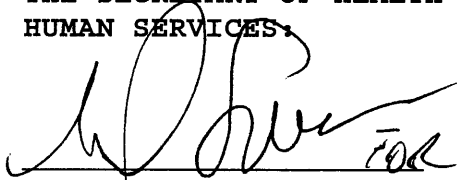
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Dated: May 15, 2008