

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: July 19, 2006)

DO NOT PUBLISH

MARIBEL VELEZ,
mother and next friend of her daughter,
MAYRA RIVERA,

Petitioner,

v.

SECRETARY OF
HEALTH AND HUMAN SERVICES,

Respondent.

No. 03-2862V
Stipulation

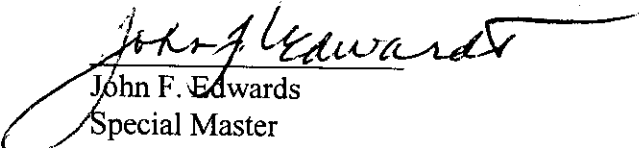
DECISION DIRECTING ENTRY OF JUDGMENT¹

On July 17, 2006, the parties filed a 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 petitioner's favor.²

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 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), petitioner may expedite payment by filing an election to accept the judgment.

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


John F. Edwards
Special Master

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

MAYRA RIVERA, by and through
her Mother and Next Friend,
MARIBEL VELEZ,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

RECEIVED & FILED

JUL 17 2006

OSM
OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

No. 03-2862V
Special Master
John Edwards

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her daughter, Mayra Rivera ("Mayra"), 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 Mayra's receipt of the diphtheria-tetanus-acellular pertussis ("DTaP") vaccine, a vaccine contained in the Vaccine Injury Table (the "Table"), 42 C.F.R § 100.3(a).
2. Mayra received her first DTaP immunization on August 8, 2002.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Mayra sustained an encephalopathy and seizure disorder caused in fact by her August 8, 2002 DTaP vaccination.

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

6. Respondent denies that Mayra suffered an encephalopathy and residual seizure disorder, or any other condition, caused by her DTaP vaccination.

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 \$18,750.00 in the form of a check payable to petitioner as guardian/conservator of Mayra's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and

b. A lump sum of \$28,138.28 in the form of a check payable to petitioner and petitioner's attorney, Charles H. Torres, Esq., for attorney's fees and costs expended in proceedings on the petition. In compliance with General Order #9, petitioner represents that she has incurred no out-of-pocket expenses in proceeding on the petition.

c. A lump sum of \$56,250.00 in the form of a check payable to the Colorado Department of Health Care Policy and Financing, in satisfaction of any Medicaid lien, sent care of Anne Baudino Holton, Assistant Attorney General, State

Services Building, 1525 Sherman Street 5th Floor, Denver, Colorado, 80203.

9. Payments made pursuant to paragraph 8 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(I), subject to the availability of sufficient statutory funds.

10. The parties and their attorneys further agree and stipulate that, except for the award for attorney's fees and litigation costs and the amount for satisfaction of the Medicaid lien, the money provided pursuant to this Stipulation will be used solely for the benefit of Mayra 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).

11. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian or conservator of Mayra's estate under the laws of the State of Colorado. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian or conservator of Mayra's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian or conservator of Mayra's estate at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian or conservator of Mayra's estate upon submission to the Secretary of written documentation

of such appointment.


12. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of Mayra, on behalf of herself, Mayra, and her 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 Mayra Rivera resulting from, or alleged to have resulted from, the DTaP vaccination administered on August 8, 2002, as alleged by petitioner in a petition for vaccine compensation filed on or about December 29, 2003, in the United States Court of Federal Claims as petition No. 03-2862V.

13. If Mayra should die prior to the Secretary making any or all of 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.

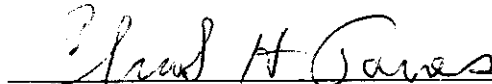
14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of

Respectfully submitted,


PETITIONER:


MARIBEL VELEZ


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PETITIONER:**


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HUMAN SERVICES:**


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Dated: