

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 10-406V
Filed: March 30, 2012
Unpublished

RORY DESA,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Stipulation; Influenza vaccine, flu;
Guillain-Barré Syndrome, GBS;
Attorneys' fees and costs

Diana Stadelnikas, Maglio Christopher & Toale, Sarasota, FL, for Petitioner.
Ryan D. Pyles, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

GOLKIEWICZ, Special Master.

On March 30, 2012, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleges that he suffered Guillain-Barré Syndrome (“GBS”), experiencing its residual effects for more than six months, as a consequence of the influenza vaccine he received on October 14, 2009. Respondent denies that the influenza vaccination was the cause of petitioner’s GBS or any other injury. Nonetheless, the parties agreed informally to resolve this matter. Stipulation, filed March 30, 2012.

The court hereby **ADOPTS** the parties’ said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. **Specifically, petitioner is**

¹ The undersigned intends to post this decision on the website for the United States Court of Federal Claims, 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. Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing. Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.**

awarded a lump sum of \$120,000.00 in the form of a check payable to petitioner; petitioner is also awarded a lump sum of \$19,933.00 in the form of a check payable jointly to petitioner and petitioner's attorney for attorneys' fees and costs.² Stipulation, ¶ 8.³

The Clerk of the Court is directed to enter judgment accordingly.

IT IS SO ORDERED.⁴

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Special Master

² This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C.A. §300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See generally, Beck v. Secretary of the Dept. of Health & Human Servs., 924 F.2d 1029 (Fed. Cir. 1991).

³ In compliance with General Order #9, petitioner stated he incurred no out of pocket expenses in proceeding on this Petition. Stipulation at ¶ 8(b).

⁴ This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

and/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 payments:

a. A lump sum of \$120,000.00 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); and

b. A lump sum of \$19,933.00 in the form of a check payable jointly to petitioner and petitioner's attorney, Diana L. Stadelnikas, Esq., for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioner confirms that he incurred no out-of-pocket litigation expenses in proceeding on the petition.

9. Petitioner and his attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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 by entities that provide health services on a pre-paid basis.

10. 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.

11. 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).

12. In return for the payments described in paragraph 8, petitioner, on behalf of himself and his 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 14, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about June 30, 2010, in the United States Court of Federal Claims as petition No. 10-406V.

13. 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.

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.

Respectfully submitted,

PETITIONER:

Rory Desa
RORY DESA

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Dated: March 30, 2012