

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

No. 09-40V
Filed: August 9, 2011
Unpublished

MARK EICHINGER, as parent of
SAMANTHA EICHINGER,

Petitioners,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Stipulation; Seizure disorder; Developmental delay; Diphtheria-tetanus-acellular pertussis, DTaP; Inactivated polio, IPV; Haemophilus influenzae B, Hib; Hepatitis B, Hep B; Pneumococcal vaccine, PCV

Mark L. Krueger, Krueger & Hernandez, S.C., Baraboo, WI, for Petitioner.
Althea Walker Davis, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

GOLKIEWICZ, Special Master.

On August 9, 2011, 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 his daughter sustained the first symptom or manifestation of the onset of a seizure disorder within forty-eight hours of the vaccinations² she received on July 3, 2006. Petitioner further alleges that his daughter suffered developmental delay as sequelae of this injury and that she experienced residual effects from it for more than six months. Stipulation at ¶

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.**

² Petitioner’s daughter received vaccinations of DTaP, IPV, Hib, hepatitis B and PCV on July 3, 2006. Stipulation at ¶ 2.

4. Respondent denies that petitioner's daughter's vaccinations caused her to suffer the onset of a seizure disorder or any other injury, and denies that her current disabilities are sequelae of her alleged vaccine injury. Nonetheless, the parties agreed informally to resolve this matter. Id. at ¶ 7.

The court hereby **ADOPTS** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein.³ **Specifically, petitioner is awarded a lump sum of \$17,500.00 in the form of a check payable to petitioner as custodian for Samantha Eichinger under the Iowa Uniform Transfer to Minors Act; petitioner is also awarded a lump sum of \$39,000.00 in the form of a check payable to petitioner and petitioner's attorney; and petitioner is awarded a lump sum of \$60.93 in the form of a check payable to petitioner.** See Stipulation, ¶ 8, filed August 9, 2011.

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

³ As listed in the award herein, the parties' Stipulation includes an agreed upon amount for attorneys' fees and costs, including petitioner's own out-of-pocket expenses in compliance with General Order #9.

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.

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

MARK EICHINGER, as parent of)	
SAMANTHA EICHINGER,)	
)	
Petitioner,)	
)	
v.)	No. 09-40V
)	Special Master Gary Golkiewicz
)	ECF
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Mark Eichinger and Theresa Eichinger filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"), on behalf of their minor daughter, Samantha Eichinger.¹ The petition seeks compensation for injuries allegedly related to Samantha's receipt of the Diphtheria-Tetanus-acellular pertussis ("DTaP"), inactivated polio ("IPV"), Haemophilus influenzae B ("Hib"), hepatitis B, and pneumococcal ("PCV") vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).

2. Samantha received the DTaP, IPV, Hib, hepatitis B and PCV immunizations on July 3, 2006.

3. The vaccines were administered within the United States.

4. Petitioner alleges that Samantha sustained the first symptom or manifestation of the

¹ On July 25, 2011, the court granted petitioners' motion to amend the caption to reflect Mark Eichinger as the sole petitioner.

onset of a seizure disorder within forty-eight hours of her vaccinations. He further alleges that Samantha suffered developmental delay as a sequela of her injury, and 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 Samantha's behalf as a result of her condition.

6. Respondent denies that the DTaP, IPV, Hib, hepatitis B and PCV vaccines caused Samantha to suffer the onset of a seizure disorder or any other injury, and denies that her current disabilities are sequelae of her alleged 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 \$17,500.00 in the form of a check payable to petitioner as custodian for Samantha Eichinger under the Iowa Uniform Transfer to Minors Act; and
- b. A lump sum of \$39,000.00 in the form of a check payable to petitioner and petitioner's attorney, Mark Krueger, for attorney's fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, \$60.93 in out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

The above amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

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 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 Samantha 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, in his individual capacity and as legal representative of Samantha, and on behalf of himself, Samantha, and 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 Samantha resulting from, or alleged to have resulted

from, the DTaP, IPV, Hib, hepatitis B and PCV vaccinations administered on July 3, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about January 21, 2009, in the United States Court of Federal Claims as petition No. 09-40V.

13. If Samantha 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.

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. 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Samantha Eichinger suffered the onset of a seizure disorder or any other injury as the result of her DTaP, IPV, Hib, hepatitis B and PCV vaccines, or that her current disabilities are sequelae of alleged vaccine-related injury.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's

Respectfully submitted,

PETITIONER:



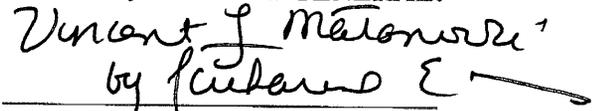
MARK EICHINGER

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Dated: 9 August 2011