

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

No. 07-580V
Filed: July 14, 2011
Unpublished

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TASHA ANN N. KAMOHAI, on behalf \*
of her minor child, KELI'ANA A. ANCHETA- \*
DeMELLO, \*

Petitioner, \*

v. \*

SECRETARY OF THE DEPARTMENT \*
OF HEALTH AND HUMAN SERVICES \*

Respondent. \*

\*\*\*\*\*

Stipulation; Diphtheria-tetanus-
acellular pertussis vaccine, DTaP;
Measles-mumps-rubella vaccine,
MMR; Guillain-Barré Syndrome,
GBS

Richard Gage, Richard Gage, PC, Cheyenne, W.Y., for Petitioner.
Linda Sara Renzi, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION^1

GOLKIEWICZ, Special Master.

In an Order, filed May 11, 2010, "based upon the medical records and testimony, the undersigned find that petitioner meets the six month statutory requirement . . . . However, based upon the record of a visit . . . [in] 2007, the undersigned finds petitioner's [daughter's] injury resolved in approximately eleven months." Thereafter, the parties engaged in discussions to resolve damages in this case. On July 14, 2011, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Stipulation, filed Jul. 14, 2011. Petitioner alleges that her daughter suffered Guillain-Barré Syndrome, GBS, as a consequence of the MMR and DTaP vaccinations her daughter received on April 10, 2006. Petitioner further alleges that her daughter experienced the residual effects of the injury for more than six months. Respondent denies that petitioner's daughter "suffered GBS as

^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.

the result of her vaccinations.” Stipulation at ¶ 6. “Respondent concedes, however, that [petitioner’s daughter] suffered an encephalopathy with[in] the time period set out in the Table for the MMR vaccine, but denies that her GBS was a sequelae of her Table injury, or that she experienced the effects of her Table injury for more than six months.” Stipulation at ¶ 7. Nonetheless, the parties agreed informally to resolve this matter. Stipulation at ¶ 8.

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 awarded:**

- a. a lump sum of \$175,000.00 in the form of a check payable to petitioner as guardian/conservator of petitioner’s daughter’s estate;**
- b. a lump sum of \$6,700.00 in the form of a check payable to petitioner;**
- c. and a lump sum of \$136,305.73 in the form of a check payable jointly to petitioner and State of Hawaii, Department of Human Services, 425 Queen Street, Honolulu, Hawaii 96813.**

See Stipulation, ¶ 9, filed July 14, 2011.

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

**IT IS SO ORDERED.<sup>2</sup>**

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

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<sup>2</sup> 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

TASHA ANN N. KAMOHAI, on behalf of  
her minor child, KELI'ANA A. ANCHETA-  
DEMBELLO;

Petitioner,

vs.

SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Respondent.

No. 07-580V  
Special Master:  
Gary J. Golkiewicz

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her daughter, Keli'ana A. Ancheta-DeMello (Keli'ana), 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").<sup>1</sup> The petition seeks compensation for injuries allegedly related to Keli'ana's receipt of the Diphtheria-Pertussis-Tetanus ("DPT")<sup>2</sup> and Measles Mumps Rubella ("MMR") vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Keli'ana received DTaP and MMR vaccinations on April 10, 2006.

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<sup>1</sup> On October 1, 2009, petitioner filed a motion to have the captioned amended to Tasha Ann N. Kamohai, on behalf of her minor child, Keli'ann A. Ancheta-DeMello, to reflect her new name and removal of her former husband as petitioner. Petitioner's motion was granted by the special master on October 1, 2009.

<sup>2</sup> Although the petition alleges that Keli'ana received a DPT vaccination on April 10, 2006, the record supports that she actually received the Diphtheria-Tetanus-acellular-Pertussis ("DTaP") vaccination on that date.

3. The vaccines were administered within the United States.

4. Petitioner alleges that as a result of her vaccinations, Keli'ana suffered Guillain-Barre syndrome (GBS). They further allege that Keli'ana 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 behalf of Keli'ana as a result of her condition.

6. Respondent denies that Keli'ana suffered GBS as the result of her vaccinations.

7. Respondent concedes however, that Keli'ana suffered an encephalopathy with the time period set out in the Table for the MMR vaccine, but denies that her GBS was a sequela of her Table injury, or that she experienced the effects of her Table injury for more than six months.

8. 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 9 of this Stipulation.

9. 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 \$175,000.00, in the form of a check payable to petitioner as guardian/conservator of Keli'ana's estate. This amount represents compensation for pain and suffering available under 42 U.S.C. § 300aa-15(a), and

b. A lump sum of \$6,700.00, in the form of a check payable to petitioner. This amount represents compensation for partial past unreimbursable expenses available under 42 U.S.C. § 300aa-15(a).

c. A lump sum payment of \$136,305.73, representing compensation for the reimbursement of the State of Hawaii Medicaid lien, payable jointly to petitioner and

State of Hawaii  
Department of Human Services  
425 Queen Street  
Honolulu, Hawaii 96813  
Attn: Blton W. M. Au

10. 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.

11. Petitioner and her 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.

12. Payments made pursuant to paragraph 9 and any amounts awarded pursuant to paragraph 10 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

13. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees, litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation, will be used solely for the benefit of Keli'ania 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).

14. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Keli'ana's estate under the laws of the State of Hawaii. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Keli'ana's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Keli'ana Ancheta-DeMello 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/conservator of the estate of Keli'ana Ancheta-DeMello upon submission of written documentation of such appointment to the Secretary.

15. In return for the payments described in paragraphs 9 and 10, petitioner, in her individual capacity and as legal representative of Keli'ana Ancheta-DeMello, on behalf of herself, Keli'ana, 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. § 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 Keli'ana resulting from, or

alleged to have resulted from, the DPaT and MMR vaccinations administered on April 10, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about August 1, 2007, in the United States Court of Federal Claims as petition No. 07-580.

16. If Keli'ana 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.

17. 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.

18. 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 10 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.

19. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Keli'ana suffered GBS as the result of vaccinations administered on April 10, 2006, or that her current disabilities are sequelae of her alleged vaccine-related injury. In addition, this Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Keli'ana experienced the

residual effects a vaccine-related encephalopathy for more than six months or that her current disabilities are sequelae of a vaccine-related encephalopathy.

20. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of Kelli Ann Ancheta-DeMello.

**END OF STIPULATION**

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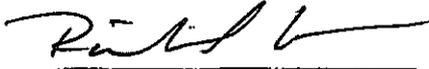
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Respectfully submitted,

**PETITIONER:**

  
TASHA ANN N. KAMOHAI

**ATTORNEY OF RECORD FOR  
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Dated: 14 July 2011