

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

No. 10-93V
Filed: March 13, 2012
Unpublished

ABIGAIL MEDINA, next of friend of minor
child, JUAN SANCHEZ,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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* Stipulation; Influenza vaccine, flu;
* Guillain-Barré Syndrome, GBS;
* Attorney fees and costs
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Thomas C. Bixby, Pearson, Flory and Bixby, LLC, Rutland, VT, for Petitioner.
Ryan D. Pyles, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

GOLKIEWICZ, Special Master.

On March 13, 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 her son suffered Guillain-Barré Syndrome (“GBS”) as a consequence of the influenza vaccination he received on November 29, 2006. Petitioner further alleges that her son experienced the residual effects of the injury for more than six months. Respondent denies that petitioner’s son suffered from GBS and/or any other injury caused by his influenza vaccination. Nonetheless, the parties agreed informally to resolve this matter. Stipulation, filed March 13, 2012.

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 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 lump sum of \$10,000.00 in the form of a check payable to petitioner, as guardian/conservator of her son's estate; and petitioner is further awarded a lump sum of \$10,953.50 in the form of a check payable jointly to petitioner and petitioner's attorney, Thomas C. Bixby, for attorneys' fees and costs available under the Vaccine Act.**² See Stipulation, ¶ 8.

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

IT IS SO ORDERED.³

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

² In compliance with General Order #9, the Stipulation states that petitioner personally incurred no out-of-pocket litigation expenses in proceeding on this petition.

³ 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.

of 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 \$10,000.00 in the form of a check payable to petitioner, as guardian/conservator of Juan's estate; and

b. A lump sum of \$10,953.50 in the form of a check payable to petitioner and petitioner's attorney, Thomas C. Bixby, Esq., for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioner personally incurred no out-of-pocket litigation expenses in proceeding on the petition.

9. 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.

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 Juan 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. 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 Juan's estate under the laws of the State of Massachusetts.

13. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of Juan, on behalf of herself, Juan, 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. § 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 Juan resulting from, or alleged to have resulted from, the flu vaccination administered on November 29, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about February 16, 2010, in the United States Court of Federal Claims as petition No. 10-93V.

14. If Juan should die prior to entry of the judgment, this agreement shall be voidable upon written notice to the Court on behalf of either or both of the parties.

15. 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.

16. 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.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Juan suffered from GBS and/or any other injury as the result of vaccination.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns, as legal representative(s) of Juan Sanchez.

END OF STIPULATION

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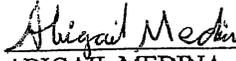
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Respectfully submitted,

PETITIONER:


ABIGAIL MEDINA

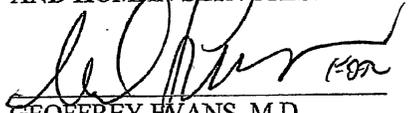
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Dated: March 13, 2012