

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

No. 11-434V
Filed: June 12, 2012
Unpublished

CYDNI MYERS, parent of JAMES MYERS,	*	
a minor,	*	
	*	
Petitioner,	*	Stipulation; Rotavirus vaccination;
	*	Intussusception
v.	*	
	*	
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioner.
Linda Sara Renzi, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

GOLKIEWICZ, Special Master.

On June 12, 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 intussusception as a consequence of the rotavirus vaccination he received on March 30, 2009. “Respondent denies that the rotavirus vaccine caused [petitioner’s son’s] intussusception, or any other injury; denies that any current disabilities are sequelae of his alleged injury; and denies that [he] experienced the residual effects of this injury for more than six months.” Stipulation at ¶ 6, filed June 12, 2012. Nonetheless, the parties agreed informally to resolve this matter. Stipulation at ¶ 7.

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 \$25,000.00 in the form of a check payable to petitioner as guardian/conservator of her son's estate. See Stipulation, ¶ 8.**

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

IT IS SO ORDERED.²

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

² 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.

6. Respondent denies that the rotavirus vaccine caused James's intussusception, or any other injury; denies that any current disabilities are sequelae of his alleged injury; and denies that James experienced the residual effects of this injury for more than six months.

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 payment:

A lump sum of \$25,000.00 in the form of a check payable to petitioner as guardian/conservator of James's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. 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.

10. 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 entities that provide health services on a pre-paid basis.

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

12. 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 James 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).

13. 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 James's estate under the laws of the State of Tennessee. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of James's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of 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 James Myers upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraph 8 and 9, petitioner, in her individual capacity, and as legal representative of James, on behalf of herself, James, 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 James resulting from, or alleged to have resulted from a rotavirus vaccination administered on March 30, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about July 5, 2011, in the United States Court of Federal Claims as petition No. 11-434V.

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

16. 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.

17. 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 9 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

Respectfully submitted,

PETITIONER:

Cyndi Myers
CYNDI MYERS

**ATTORNEY OF RECORD FOR
PETITIONER:**

by Meredith K. Daniels
Ronald Homer Rule 83.1(d)(2)
RONALD C. HOMER
Conway, Homer & Chin-Caplan, P.C.
16 Shawmut Street
Boston, Massachusetts 02116
(617) 695-1990

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**

Vincent J. Matanoski
VINCENT J. MATANOSKI
Acting Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**

Geoffrey Evans M.D.
GEOFFREY EVANS, M.D.
Director, Division of
Vaccines Injury Compensation
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 11C-26
Rockville, MD 20857

Dated: 19 June 2012

**ATTORNEY OF RECORD FOR
RESPONDENT:**

Linda S. Renzi
LINDA S. RENZI
Senior Trial Counsel
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4133