

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

No. 05-414V
Filed: April 13, 2009

NOT TO BE PUBLISHED

| | | |
|-------------------------------|---|--|
| KATHLEEN KONG, parent of, | * | |
| LEIALANI KONG, a minor | * | |
| | * | Idiopathic Thrombocytopenic Purpura (ITP); |
| Petitioner, | * | MMR; Stipulation |
| | * | |
| v. | * | |
| | * | |
| SECRETARY OF THE DEPARTMENT | * | |
| OF HEALTH AND HUMAN SERVICES, | * | |
| | * | |
| Respondent. | * | |

DECISION¹

On March 27, 2009, 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 Leialani sustained a vaccine related injury of idiopathic thrombocytopenic purpura related to the MMR vaccination received on October 15, 2002. Petitioner further alleges that Leialani sustained the first symptom or manifestation of onset within the time period set forth in the Injury Table for the MMR vaccine. Respondent denies that Leialani’s ITP qualifies as a Table Injury, and denies that her ITP injury was actually caused by her receipt of the MMR vaccine. Nonetheless, the parties agreed informally to resolve this matter.

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 **\$34,610.00** in the form of a check payable to petitioner as conservator of the estate of Leialani Kong and a lump sum of **\$390.00** in the form of a check payable to

¹The undersigned intends to post this decision on the United States Court of Federal Claims’s website, 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 trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and 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.

petitioner as compensation for past unreimbursed vaccine-related medical expenses incurred on behalf of her daughter, Leialani Kong. See Stipulation, para. 8, March 27, 2009. The Clerk of the Court is directed to enter judgment accordingly.²

IT IS SO ORDERED.

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

²Pursuant 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

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|--------------------------|---|----------------------|
| _____ |) | |
| KATHLEEN KONG, Parent of |) | |
| LEIALANI KONG, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 05-414V |
| |) | Chief Special Master |
| |) | GARY GOLKIEWICZ |
| SECRETARY OF HEALTH |) | |
| AND HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her daughter, Leialani Kong ("Leialani"), 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"). The amended petition seeks compensation for injuries allegedly related to Leialani's receipt of a Measles-Mumps-Rubella ("MMR") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).

2. Leialani received an MMR immunization on October 15, 2002.

3. The vaccine was administered within the United States.

4. Petitioner alleges that Leialani sustained the first symptom or manifestation of the onset of idiopathic thrombocytopenic purpura ("ITP") within the time period set forth

in the Injury Table for MMR vaccine. She further alleges that Leialani suffered the residual effects or complications of her ITP illness for a period of more than six months following the date of vaccination and that she underwent a surgical procedure for treatment in connection with her alleged vaccine injury.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Leialani as a result of her condition.

6. Respondent denies that Leialani's ITP qualifies as a Table injury, and denies that her ITP injury was actually caused by her receipt of the MMR vaccine.

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, which represent compensation for all damages that would be available to petitioner under 42 U.S.C. §300aa-15(a):

a. A lump sum of \$34,610.00 in the form of a check payable to petitioner as conservator of the estate of Leialani Kong;

and

b. A lump sum of \$390.00 in the form of a check payable to petitioner as compensation for past unreimbursed vaccine-related medical expenses incurred on behalf of her daughter, Leialani Kong.

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. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 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 the amount stated in paragraph 8(b) and any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation, will be used solely for the benefit of Leialani 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 conservator of Leialani's estate under the laws of the State of California. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as conservator of Leialani's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as conservator of the estate of Leialani Kong 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 conservator of the estate of Leialani Kong upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of Leialani, on behalf of herself, Leialani, and her heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of Leialani resulting from, or alleged to have resulted from the MMR vaccination administered on October 15, 2002, as alleged by petitioner in a petition for vaccine compensation

filed on March 30, 2005, and as amended on July 27, 2007, in the United States Court of Federal Claims as petition No. 05-414V.

14. If Leialani should die prior to receiving any or all of the payments described in paragraph 8, this agreement shall be considered voidable upon proper 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 null and void at the sole discretion of either party.

16. This Stipulation expresses a full and complete 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.

18. All rights and obligations of petitioner hereunder shall apply equally to her successors and assigns as legal representatives of Leialani Kong.

END OF STIPULATION