

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

No. 09-140V

Filed: January 21, 2010

JOSEPH UHELKY and JAMIE UHELKY,	*	
Individually and as Parents and	*	
Natural Guardians of CAITLIN UHELKY,	*	
an infant,	*	Stipulation; MMR vaccine;
	*	Immune Thrombocytopenia
Petitioners,	*	Purpura
	*	
v.	*	
	*	
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

DECISION¹

GOLKIEWICZ, Chief Special Master.

On January 20, 2010, the parties to the above-captioned case filed a Stipulation, attached hereto, memorializing their agreement as to the appropriate amount of compensation in this case. Petitioners allege that Caitlin Uhelsky suffered an injury, Immune Thrombocytopenia Purpura, as a result of her December 20, 2007 Measles-Mumps-Rubella vaccine. Respondent’s Rule 4(c) Report concedes that the medical records confirm the onset of Caitlin’s injury within the time period specified in the Table, but denies that Caitlin suffered the residual effects or complications of the condition for more than six months following vaccination. Maintaining their above-stated positions, the parties have nevertheless 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

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 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.

a lump sum of **\$15,670.00** in the form of a check payable to petitioners. See Stipulation, para. 8a. Further, the parties have stipulated to attorney's fees and costs in the amount of **\$11,900.00** in the form of a check payable jointly to petitioners and petitioners' attorney, Steven I. Milligram. See Stipulation, para. 8b.²

The Clerk of the Court is directed to enter judgment accordingly.³

IT IS SO ORDERED.

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

² As stated in the Stipulation and in compliance with General Order #9, petitioners incurred no out-of-pocket expenses in this proceeding. Stipulation, para. 8b.

Furthermore, this amount for attorney fees and costs is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C.A. §300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See generally, Beck v. Secretary of HHS, 924 F.2d 1029 (Fed. Cir. 1991).

³Pursuant 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

JOSEPH AND JAMIE UHELSKY,)
Individually and as Natural Parents and)
Guardians of CAITLIN UHELSKY, an infant,)
))
Petitioners,)
v.)
))
SECRETARY OF HEALTH)
AND HUMAN SERVICES,)
))
Respondent.)
_____)

No. 09-140V
Chief Special Master Golkiewicz

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their daughter, Caitlin Uhelsky, petitioners Joseph and Jamie Uhelsky 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 petition seeks compensation for injuries allegedly related to Caitlin's receipt of the Measles-Mumps-Rubella ("MMR") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3.
2. Caitlin received her MMR vaccination on December 20, 2007.
3. The vaccination was administered within the United States.
4. Petitioners allege that Caitlin sustained the first symptom or manifestation of the onset of Immune Thrombocytopenia Purpura ("ITP") in January, 2008.
5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Caitlin as a result of her condition.
6. Respondent's Rule 4(c) Report concedes that the medical records confirm the onset of ITP within the time period specified in the Table, but denies that Caitlin suffered the residual

effects or complications of the condition for more than six months following 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 payment:

- a. A lump sum of \$15,670.00 in the form of a check payable to petitioners. This amount represents \$15,000.00 in compensation for all damages that would be available to Caitlin Uhelsky under 42 U.S.C. § 300aa-15(a) and \$670.00 for petitioners' past unreimbursed expenses; and
- b. A lump sum of \$11,900.00 in the form of a check payable to petitioners and petitioners' attorney, Steven I. Milligram, for attorney's fees and costs, and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioners in proceeding on the petition.

9. 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.

10. The parties and their attorneys further agree and stipulate that, except for any award for attorney's fees and litigation costs and past unreimbursed expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of Caitlin 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).

11. In return for the payments described in paragraph 8, petitioners, in their individual capacity and as legal representatives of Caitlin, and on behalf of themselves, Caitlin, and

Caitlin's heirs, executors, administrators, successors or assigns, do 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 Caitlin resulting from, or alleged to have resulted from, the MMR vaccination administered on December 20, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about March 5, 2009, in the United States Court of Federal Claims as petition No. 09-140V.

12. If Caitlin should die prior to receiving the payment described in paragraph 8(a), this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

13. 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.

14. This Stipulation expresses a full and complete 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.

15. All rights and obligations of petitioners hereunder shall apply equally to their successors and assigns as legal representatives of Caitlin Uhelsky.

END OF STIPULATION