

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-0361V

(Not to be Published)

DIANE F. POLLARD, executor of the estate of *
PAUL A. POLLARD, Jr., deceased *

Petitioner, *

v. *

SECRETARY OF HEALTH AND HUMAN *
SERVICES, *

Respondent. *

Filed: June 25, 2012

Decision by Stipulation; Flu
Vaccine; Guillain-Barre
Syndrome (GBS)

DECISION¹

HASTINGS, Special Master.

This is an action seeking an award under the National Vaccine Injury Compensation Program² on account of the death of Paul A. Pollard, Jr. On June 20, 2012, counsel for both parties filed a Stipulation, stipulating that a decision should be entered granting compensation. The parties have stipulated that petitioner shall receive the following compensation:

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with 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, this entire document will be available to the public. *Id.*

² The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

- A lump sum of \$230,000.00, in the form of a check payable to petitioner, representing compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

Under the statute governing the Program, as well as the “Vaccine Rules” adopted by this court, the special master must now enter a decision endorsing that stipulation, and the clerk must enter judgment, in order to authorize payment of the award. See §12(d)(3)(A) and (e)(3); § 13(a); Vaccine Rules 10(a), 11(a).³

I have reviewed the file, and based on that review, I conclude that the parties’ stipulation appears to be an appropriate one. Accordingly, my decision is that a Program award shall be made to petitioner in the amount set forth above. In the absence of a timely-filed motion for review of this Decision, the clerk shall enter judgment in accordance herewith.

IT IS SO ORDERED.

s/George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master

³ The “Vaccine Rules of the United States Court of Federal Claims” are found in Appendix B of the Rules of the United States Court of Federal Claims.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF THE SPECIAL MASTERS

DIANE F. POLLARD, executor of the)	
estate of PAUL A. POLLARD, JR., deceased,)	
)	
Petitioner,)	No. 10-361V
v.)	Special Master
)	George Hastings
SECRETARY OF HEALTH)	ECF
AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Diane F. Pollard (“petitioner”), as executor of the estate of Paul A. Pollard, Jr. (“Mr. Pollard”), deceased, 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 Mr. Pollard’s receipt of a trivalent influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Mr. Pollard received the flu vaccination on or about October 22, 2008.
3. The vaccine was administered within the United States.
4. Petitioner alleges that as a result of receiving the flu vaccine, Mr. Pollard suffered Guillain-Barré Syndrome (“GBS”). Mr. Pollard passed away on April 19, 2009. Petitioner further alleges that Mr. Pollard’s death was the sequela of his alleged vaccine-related injury.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Mr. Pollard as a result of his alleged condition or his death.

6. Respondent denies that the flu vaccination caused Mr. Pollard's GBS, or any other injury. Respondent further denies that Mr. Pollard experienced the residual effects of his alleged vaccine-related injury for more than six months, and denies that Mr. Pollard's death was vaccine-related.

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 \$230,000.00 in the form of a check payable to petitioner as legal representative of the estate of Paul A. Pollard, Jr. 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. Payment 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the legal representative of Mr. Pollard's estate under the laws of the Commonwealth of Virginia. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as the legal representative of Mr. Pollard's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of Paul A. Pollard, Jr. 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 legal representative of the estate of Paul A. Pollard, Jr. upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of Mr. Pollard's estate, on behalf of herself and Mr. Pollard's 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 Mr. Pollard, resulting from, or alleged to have resulted from, the flu vaccination administered on October 22, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about June 10, 2010, in the United States Court of Federal Claims as petition No. 10-361V.

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 voidable at the sole discretion of either party.

14. 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.

15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused Mr. Pollard's GBS or any other injury; that Mr. Pollard experienced the residual effects of a vaccine-related injury for more than six months, or that his death was vaccine-related.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of Paul A. Pollard Jr.'s estate.

END OF STIPULATION

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Respectfully submitted,

PETITIONER:

Diane F. Pollard
DIANE F. POLLARD

**ATTORNEY OF RECORD FOR
PETITIONER:**

Ronald C. Homer by *Amy J. Sorhono*
Rule 83.1(c)(2)

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Dated: *June 20, 2012*