

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-316V

Filed: June 28, 2012

_____)	
LISA BURRELL-SMITH,)	NOT TO BE PUBLISHED
)	
Petitioner,)	
)	
v.)	Stipulation; influenza (flu) vaccine;
)	neurological abnormalities;
SECRETARY OF)	transverse myelitis (TM)
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

Elizabeth M. Muldowney, Rawls & McNelis, P.C., Richmond, VA, for Petitioner;
Ryan D. Pyles, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

LORD, Special Master.

On June 27, 2012, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, Lisa Burrell-Smith, alleges that she suffered injuries related to her receipt of the influenza ("flu") vaccine on or about October 1, 2009, which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Specifically, Petitioner alleges that the flu vaccine caused her to develop neurological abnormalities compatible with transverse myelitis ("TM"). Petitioner further alleges that she experienced the residual effects of this injury for more than six months. Petitioner seeks compensation related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of his condition.

Respondent denies that the flu vaccine is the cause of Petitioner's alleged neurological condition, and/or any other injury. Nonetheless, the parties have agreed informally to resolve this matter.

¹ In accordance with Vaccine Rule 18(b), a petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Rules of the United States Court of Federal Claims ("RCFC"), Appendix B, Vaccine Rule 18(b). Redactions ordered by the special master, if any, appear in the document as posted on the United States Court of Federal Claims' website.

The Court hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioner is awarded:

- a. **a lump sum of \$126.71**, which amount represents reimbursement of a State of North Carolina Medicaid lien, **in the form of a check payable jointly to**

Petitioner and

State of North Carolina
Division of Medical Assistance
Office of the Controller
2022 Mail Service Center
Raleigh, NC 27699-2022;

and

- b. **a lump sum of \$400,000.00 in the form of a check payable to Petitioner**, which amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

The Court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/Dee Lord
Dee Lord
Special Master

² 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.

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

_____)	
LISA BURRELL-SMITH,)	
)	
Petitioner,)	
)	
v.)	No. 11-316V
)	Special Master Sandra D. Lord
SECRETARY OF HEALTH)	ECF
AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner Lisa Burrell-Smith ("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 petition seeks compensation for injuries allegedly related to petitioner's receipt of the trivalent influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received a flu vaccine on or about October 1, 2009.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the flu vaccine caused her to develop "neurological abnormalities, compatible with transverse myelitis," and that she experienced residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.

6. Respondent denies that the flu immunization is the cause of petitioner's alleged neurological condition, and/or any other injury.

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 **\$126.71**, which amount represents reimbursement of a State of North Carolina Medicaid lien, in the form of a check payable jointly to petitioner and

State of North Carolina
Division of Medical Assistance
Office of the Controller
2022 Mail Service Center
Raleigh, NC 27699-2022;

and

- b. A lump sum of **\$400,000.00** in the form of a check payable to petitioner. This amount represents compensation for all remaining 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 they have identified to respondent all

known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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. 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.

12. 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 petitioner 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. In return for the payments described in paragraphs 8 and 9, petitioner, on behalf of herself and her heirs, executors, administrators, successors and/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 petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on October 1, 2009, as alleged by

petitioner in a petition for vaccine compensation filed on or about May 18, 2011, in the United States Court of Federal Claims as petition No. 11-316V.

14. If petitioner should die prior to entry of judgment, this agreement shall be 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 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, 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 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 the flu vaccine caused petitioner's alleged neurological condition, or any other injury.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

Respectfully submitted,

PETITIONER:


LISA BURRELL-SMITH

**ATTORNEY OF RECORD FOR
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Dated: June 27, 2012