

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-554V

Filed: May 27, 2011

Reissued: June 7, 2011

_____)	
PETER DASSENKO,)	NOT TO BE PUBLISHED
)	
Petitioner,)	
)	
v.)	Stipulation; Td vaccine
)	Gullain-Barré Syndrome; GBS;
SECRETARY OF)	Attorneys' fees and costs;
HEALTH AND HUMAN SERVICES,)	Entitlement
)	
Respondent.)	
_____)	

Alvin O. Boucher, Robert Vogel Law Office, P.C., Grand Forks, ND, for Petitioner.
Lara A. Englund, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

LORD, Special Master.

On May 26, 2011, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, Peter Dassenko, alleged that he suffered from Gullain-Barré Syndrome as a result of his July 31, 2009, tetanus toxoid vaccination (Td). Petitioner alleged that his injury was caused-in-fact by his receipt of the Td vaccine, which is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R § 100.3(a). Petitioner further alleged that he experienced the residual effects of this injury for more than six months. He sought damages related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34.

Respondent denied that the Td vaccine caused Petitioner's injury, and Respondent further denied that Petitioner's current disabilities are sequelae of his alleged injury. Nonetheless, the parties have agreed informally to resolve this matter.

¹ The 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, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). 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 ruling will be available to the public. Id.

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 lump sum of **\$156,012.42, in the form of a check payable to petitioner, Peter Dassenko.** This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

On April 25, 2011, the parties in the above-captioned case filed a stipulation styled "Stipulation of Facts Concerning Attorney's Fees and Costs," memorializing their agreement as to the appropriate amount of attorney's fees in this case ("Stipulation on Fees"). After informal discussions with Respondent, Petitioner requests a total award of \$7,767.50 in attorneys' fees and costs. In accordance with General Order #9, Petitioner's counsel represents that Petitioner incurred \$2,561.42 in personal litigation costs. Respondent does not object to this request. Id.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. 42 U.S.C. § 300aa-15(e). After reviewing the request, the court finds the stipulated amount of \$7,767.50 in attorneys' fees and \$2,561.42 in Petitioner's personal litigation costs to be reasonable. Based on the request's reasonableness, the undersigned **GRANTS** the parties' request as outlined in the Stipulation on Fees, attached hereto as Appendix B.

Accordingly, pursuant to Vaccine Rule 13, Petitioners are awarded a total of **\$7,767.50** in attorneys' fees and costs and **\$2,561.42** in Petitioner's personal litigation costs. The judgment shall reflect that, for attorneys' fees and costs, Petitioner is awarded:

the amount of \$7,767.50, in a check made payable jointly to Petitioner and Petitioner's counsel, and

the amount of \$2,561.42, in a check made payable to Petitioner only.

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.

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Petitioner,)	
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v.)	No. 10-554V
)	Special Master Sandra Dee Lord
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner Peter Dassenko (“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 tetanus toxoid vaccine (“Td”), which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Petitioner received a Td vaccine on or about July 31, 2009.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the Td vaccine caused him to develop Guillain-Barre Syndrome (“GBS”) and that he 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 his condition.
6. Respondent denies that the Td vaccine is the cause of petitioner’s GBS or his current condition.

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 **\$156,012.42** in the form of a check payable to petitioner. 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 his 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 himself, 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 petitioner resulting from, or alleged to have resulted from, the Td vaccination administered on July 31, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about August 16, 2010, in the United States Court of Federal Claims as petition No. 10-554V.

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.

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SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION OF FACTS CONCERNING ATTORNEY’S FEES AND COSTS

It is hereby stipulated by and between the parties, the following factual matters:

1. Alvin O. Boucher, of Robert Vogel Law Office, P.C, is the attorney of record for petitioner Peter Dassenko.
2. Petitioner submitted an informal request for attorney’s fees and costs to respondent on or about February 22, 2011.
3. In informal discussions, respondent raised questions about certain items in petitioner’s request. Based on these discussions, petitioner has amended his request for attorney’s fees in this matter to request reimbursement for attorney’s fees in the amount of \$7,767.50.
4. Pursuant to General Order #9, petitioner advanced \$2,561.42 in reimbursable costs payable solely to petitioner in pursuit of his claim. This amount is in addition to the attorney’s fees stated in paragraph 3, *supra*.
5. The parties now request that a decision awarding attorney’s fees and costs in the amount of **\$10,328.92**, be issued.