

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-330V

Refiled: June 30, 2011

Originally Filed: June 22, 2011

KRISTIN JENNINGS, mother and natural)	
Guardian of DYLAN JENNINGS,)	
)	
Petitioner,)	NOT TO BE PUBLISHED
)	
v.)	Stipulation; Hepatitis B;
)	Acute Disseminated
SECRETARY OF)	Encephalomyelitis; ADEM;
HEALTH AND HUMAN SERVICES,)	Rule 60
)	
Respondent.)	
)	

David L. Terzian, Rawls & McNelis P.C., Richmond, VA, for Petitioner.

Glenn A. MacLeod, U.S. Dep't of Justice, Washington, D.C. for Respondent.

AMENDED DECISION ON STIPULATION¹

On June 29, 2011, I convened a conference with the parties to discuss correcting a clerical error contained in the original decision, issued on June 22, 2011. The original decision contained a transcription error concerning the award of an annuity pursuant to the Stipulation. The parties have agreed that the language in part (2) of the award in this Amended Decision conforms with the terms of the Stipulation. The Clerk has been directed to vacate the judgment entered on June 23, 2011, and to enter judgment pursuant to this Amended Decision. Order, June 30, 2011; see RCFC 60(a).

On May 21, 1999, Petitioner Kristin Jennings filed a petition on behalf of her son, Dylan Jennings, seeking compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (2006). Petitioner alleged that Dylan suffered from neurological injuries (i.e., meningoencephalitis and/or Acute Disseminated Encephalomyelitis (ADEM)) which were caused in fact by a Hepatitis B

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.

(Hep B) vaccination he received on April 16, 1997. Stipulation at 1. On March 9, 2011, the parties agreed to a negotiated resolution of this case, and I issued a 15 week order.

On June 22, 2011, the parties filed a joint Stipulation setting forth all items of compensation to which the parties agreed should be awarded to Petitioner. Based upon the record as a whole, I find the Stipulation reasonable and that Petitioner is entitled to an award as stated in the Stipulation. Pursuant to the Stipulation, attached as Appendix A, the court awards Petitioner:

- (1) A lump sum payment of \$250,000.00 in the form of a check payable to Petitioner as the court-appointed guardian of Dylan Jennings; and**
- (2) An annuity, the cost of which is neither less nor greater than \$750,000.00, to be purchased and owned by the Secretary of Health and Human Services as set forth in paragraphs 10 and 11 of the attached Stipulation.**

These amounts 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 of the court 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

6. Respondent denies that Dylan's neurological illness was caused by the Hep B vaccination administered to him on April 16, 1997, and denies that his current disabilities are sequelae of his alleged 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 \$250,000.00 in the form of a check payable to petitioner as the court-appointed guardian/conservator of the estate of Dylan Jennings. No payments shall be made until petitioner provides respondent with documentation establishing that she has been appointed as the guardian/conservator of Dylan Jennings's estate; and
- b. An amount neither less nor greater than \$750,000.00 to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

These amounts represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-,

AA, AA+, or AAA;

- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of Dylan, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner, as the court-appointed guardian/conservator of the estate of Dylan Jennings, for the benefit of Dylan Jennings, for all remaining damages that would be available under 42 U.S.C. §300aa-15(a), as follows:

- a. Beginning as soon as practicable after the date of judgment, \$1,500.00 per month for life only; and
- b. \$210,765.00 payable in a certain lump sum on March 31, 2015; and
- c. \$210,765.00 payable in a certain lump sum on March 31, 2018.

The purchase price of the annuity shall be neither less nor greater than \$750,000.00. In the event that the cost of the annuity payments set forth above varies from \$750,000.00, the lump sum payment to be made on March 31, 2018, shall be adjusted to ensure that the total cost of the annuity is neither less nor greater than \$750,000.00. Should Dylan Jennings predecease the exhaustion of any certain lump sum payments, any remaining certain lump sum payments shall be made to his estate. Written notice to the Secretary of Health and Human Services and to the Life Insurance Company shall be provided within twenty (20) days of Dylan Jennings's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the

payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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.

13. 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.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. 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 either immediately or as part of the annuity contract, will be used solely for the benefit of Dylan 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).

16. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Dylan's estate under the laws of the State of Colorado. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Dylan's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Dylan Jennings 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 guardian(s)/conservator(s) of the estate of Dylan Jennings upon submission of written documentation of such appointment to the Secretary.

17. In return for the payments described in paragraphs 8 and 12, petitioner, in her individual capacity and as legal representative of Dylan, on behalf of herself, Dylan, and his heirs, executors, administrators, successors or assigns, do 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 Dylan resulting from, or alleged to have resulted from, the Hep B vaccine administered on or about April 16, 1997, as alleged by petitioner in a petition for vaccine compensation filed on or about May 21, 1999, in the United States Court of

Federal Claims as petition No. 99-330V.

18. If Dylan 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.

19. 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.

20. 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 12 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.

21. Petitioner hereby authorizes respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

22. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Dylan's neurological illness was caused by the Hep B vaccine administered to him on April 16, 1997, or that his current disabilities are sequelae of

his alleged vaccine-related illness.

23. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of Dylan Jennings.

END OF STIPULATION

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