

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. [redacted] V

Originally Filed: August 24, 2010

Filed Redacted: August 27, 2010

Not for publication

JOHN DOE 83 and JANE DOE 83, *
as parents and natural guardians of, *
CHILD DOE 83, *

Petitioners, *

v. *

Damages decision based on stipulation;
Guillain-Barre Syndrome (GBS), flu
vaccination. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

*

F. John Caldwell, Jr., Sarasota, FL, for petitioners.

Julia W. McNerny, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDDING DAMAGES¹

On August 23, 2010, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioners alleged that CHILD DOE 83

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access. This decision is being redacted because of petitioners' August 25, 2010, motion to redact which was granted.

suffered Guillain-Barre Syndrome (GBS) following a flu vaccination. Respondent denies that CHILD DOE 83's GBS was caused in fact by the flu vaccination. Nonetheless, the parties agreed to resolve this matter informally.

The court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a lump sum of **\$10,000.00** in the form of a check made payable to petitioners as guardians/conservators of CHILD DOE 83's estate.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: August 24, 2010

/s/ Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

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

____ AND _____)
____, as parents and natural)
guardians of _____)
a minor,)
)
Petitioners,)
)
)
SECRETARY OF HEALTH AND)
HUMAN SERVICES)
)
Respondent.)

ECF
No. _____ V
Special Master Laura Millman

STIPULATION

The parties hereby stipulate to the following matters:

1. _____ and _____ ("petitioners") 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 _____'s receipt of an influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. _____ received his flu immunization on October 1, 2007.
3. The vaccine was administered within the United States.
4. Petitioners allege that _____ suffered Guillain-Barre Syndrome ("GBS") that was caused in fact by the vaccination. Petitioners further allege that _____ developed sequelae of that injury, and that he experienced residual effects of this injury for more than six months.
5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on _____'s behalf as a result of his condition.

6. Respondent denies that the flu vaccine caused [REDACTED]'s GBS; denies that [REDACTED]'s current disabilities are sequelae of his alleged injury; and denies that [REDACTED] experienced the residual effects of this injury for more than six months.

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 petitioners have 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 \$10,000.00 in the form of a check payable to petitioners as guardians/conservators of [REDACTED]'s estate. 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 petitioners have 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. Petitioners and their attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 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, the money provided pursuant to this Stipulation, will be used solely for the benefit of [REDACTED] 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. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of [REDACTED]'s estate under the laws of the State of Texas.

14. In return for the payments described in paragraph 8 and 9, petitioners, in their individual capacities, and as legal representatives of [REDACTED], on behalf of themselves, [REDACTED] 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. § 300 aa-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 [REDACTED] resulting from, or alleged to have resulted

from, the flu vaccination administered on October 1, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about April 24, 2009, in the United States Court of Federal Claims as petition No. [REDACTED].

15. If [REDACTED] should die prior to entry of the judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

16. 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.

17. 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.

18. 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 [REDACTED]'s GBS or current disabilities; that [REDACTED]'s current disabilities are sequelae of his alleged injury; or that [REDACTED] experienced the residual effects of this injury for more than six months.

19. All rights and obligations of petitioners hereunder shall apply equally to petitioners'

heirs, executors, administrators, successors, and/or assigns as legal representatives of [REDACTED]

[REDACTED]

END OF STIPULATION

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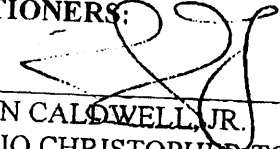
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Respectfully submitted;

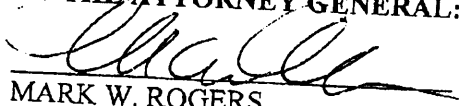
PETITIONERS:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

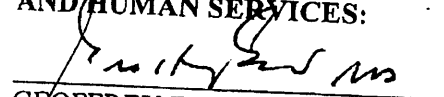
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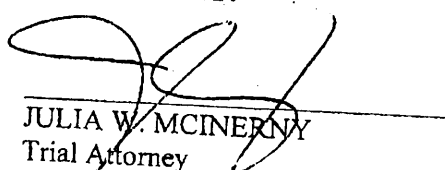
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Dated: 8/23/10