

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-672 V

Date of Redacted Decision: October 31, 2011

Date of Original Decision: October 24, 2011

Not for Publication

MICHELLE TAYLOR GRASSIE, *
natural guardian of *
A.R.H., a minor child, *

Petitioner, *

Damages Decision Based on Stipulation;
Hib Vaccine; Meningitis

v. *

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

Respondent. *

Anne C. Toale, Sarasota, FL, for petitioner.
Glenn A. MacLeod, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On October 18, 2011, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleges that the vaccinee suffered

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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 redact such information prior to the document's disclosure.

The original Decision Awarding Damages was issued October 24, 2011. On the same day, petitioner filed a motion to redact, requesting that the decision be redacted to include the initials of the vaccinee, who is a minor, rather than her full name. Respondent does not object to the motion. Petitioner's motion is **GRANTED**. Consistent with Vaccine Rule 16(b) and RCFC 5.2, the unpublished decision posted on the court's website will include the minor's initials rather than her full name.

from meningitis following a Haemophilus influenzae type b (“Hib”) vaccination. Respondent denies that the vaccinee’s meningitis was caused in fact by her Hib vaccination. Nonetheless, the parties agreed to resolve this matter informally.

The court finds the terms to be reasonable and hereby adopts the parties’ stipulation and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. A lump sum of **\$961.67**, representing compensation for past unreimbursable expenses incurred on behalf of the vaccinee. The award shall be in the form of a check made payable to petitioner, Michelle Taylor Grassie.
- b. A lump sum of **\$10,000.00**, representing compensation for damages. The award shall be in the form of a check payable to petitioner, Michelle Taylor Grassie, natural guardian of A.R.H., a minor child.

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: October 24, 2011

/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

MICHELLE TAYLOR GRASSIE,
Natural Guardian of
A [REDACTED] R [REDACTED] H [REDACTED], a Minor Child,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

No. 08-672V (ECF)
SPECIAL MASTER
LAURA D. MILLMAN

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, as Parent and Natural Guardian of A [REDACTED] R [REDACTED] H [REDACTED], ("A [REDACTED]"), filed a petition for vaccine injury 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 A [REDACTED]'s receipt of the Haemophilus influenzae type b ("Hib") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. A [REDACTED] received a Hib immunization on or about August 15, 2008.
3. The vaccine was administered within the United States.
4. Petitioner claims that A [REDACTED] suffered meningitis as a result of the August 15, 2008 Hib immunization.
5. Petitioner represents that there has been no prior award or settlement of a civil action

for damages on A█████'s behalf as a result of her alleged injury.

6. Respondent denies that the Hib vaccine caused A█████ to suffer meningitis or any other injury and denies that A█████ experienced the residual effects of any alleged vaccine related 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 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 \$961.67 in the form of a check payable to petitioner, Michelle Taylor Grassie, representing compensation for past unreimbursable vaccine-related medical expenses incurred on behalf of her daughter, A█████ R█████ H█████, pursuant to 42 U.S.C. §300aa-15(a)(A)(1); and

b. A lump sum of \$10,000.00 in the form of a check payable to petitioner, Michelle Taylor Grassie, Natural Guardian of A█████ R█████ H█████, a minor child, representing compensation for all other 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 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. 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as Legal Guardian of A██████████R██████████H██████████ under the laws of the State of Kansas.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and as Legal Guardian of A██████████R██████████H██████████, and on behalf of A██████████'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 A██████████R██████████H██████████ resulting from, or alleged to have resulted from, the Hib vaccination administered on or about August 15, 2008, as alleged by

petitioner in a petition for vaccine compensation filed on or about September 23, 2008, in the United States Court of Federal Claims as petition No. 08-672V.

14. If A█████ 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 Hib vaccine caused A█████ to suffer meningitis or any other injury, or that A█████ experienced the residual effects of any alleged vaccine related injury for more than six months.

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:

Michelle Taylor Grassie
MICHELLE TAYLOR GRASSIE

**ATTORNEY OF RECORD FOR
PETITIONER:**

Anne C. Toale
ANNE C. TOALE, ESQ.
MAGLIO, CHRISTOPHER & TOALE LAW FIRM
Bayou Professional Center
1751 Mound Street, Second Floor
Sarasota, FL. 34236
Tel: (941) 952-5242
Fax: (941) 952-5042

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**

Vincent J. Matanoski
by Anthony E.
VINCENT J. MATANOSKI
Acting Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**

Geoffrey Evans
GEOFFREY EVANS, M.D.
Director, Division of
Vaccine Injury Compensation
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 11C-26
Rockville, MD 20857

Dated: 10/18/11

**ATTORNEY OF RECORD FOR
RESPONDENT:**

Glenn A. MacLeod
GLENN A. MACLEOD
Senior Trial Counsel
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 616-4122