In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-525 V
Filed: January 12, 2011
Not for Publication

RICKY and DESHAWN KHAMIS, as Parents and Legal Representatives of their Minor Son, KADEN JAMES KHAMIS,	*	
Petitioners,	*	Damages decision based on stipulation; Flu vaccine, Guillain-Barre Syndrome
v.	*	
SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,	*	
Respondent.	*	

Ramon Rodriguez., Richmond, VA, for petitioners.
Lisa A. Watts, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES[1]

On January 12, 2011, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioners alleged that Kaden Khamis suffered from Guillain-Barre syndrome ("GBS") following a flu vaccination. Respondent denies that Kaden's GBS was caused in fact by the flu vaccination. Nonetheless, the parties agreed to

[1] Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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

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. a lump sum of **$135,000.00** in the form of a check made payable to petitioners as guardians/conservators of Kaden'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: January 12, 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

RICKY and DESHAWN KHAMIS, as Parents and Legal Representatives of their minor son, KADEN JAMES KHAMIS, Petitioners, v. SECRETARY OF HEALTH AND HUMAN SERVICES, Respondent.	)	No. 09-525V Special Master Millman **ECF**

STIPULATION

The parties hereby stipulate to the following matters:

1. On August 11, 2009, Ricky and Deshawn Khamis ("petitioners") filed this claim on behalf of their minor son, Kaden James Khamis ("Kaden"), under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Kaden's receipt of influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).

2. Kaden received the influenza vaccine on October 5, 2006.

3. The vaccine was administered within the United States.

4. Petitioners allege that within three weeks of vaccination, Kaden suffered the onset of Guillain-Barré syndrome ("GBS"). Petitioners allege that Kaden's GBS was caused-in-fact by receipt of the influenza vaccine. Petitioners further allege that Kaden suffered 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 behalf of Kaden as a result of his condition.

6. Although respondent denies that the influenza vaccine caused Kaden's GBS or current condition, on December 8, 2009, respondent filed a Rule 4(c) Report electing not to expend resources to contest the issue of entitlement in this case.

7. Therefore, on December 17, 2009, the Special Master issued a decision establishing petitioners' entitlement to compensation under the Vaccine Program on Kaden's behalf. Thus, 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 $135,000.00 in the form of a check payable to petitioners as guardians/conservators of Kaden'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 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. Payment 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, the money provided pursuant to this Stipulation will be used solely for the benefit of Kaden 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 Kaden's estate under the laws of the State of Arizona. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Kaden's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Kaden James Khamis at the time payment pursuant to this Stipulation is to be made, such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of Kaden James Khamis upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities and as legal representatives of Kaden, on behalf of themselves, Kaden, 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 Kaden James Khamis resulting from, or alleged to have resulted from, the influenza vaccination administered to him on October 5, 2006, as alleged in a petition for vaccine compensation filed on or about August 11, 2009, in the United States Court of Federal Claims as petition No. 09-525V.

15. If Kaden 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.

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 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 the 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 influenza vaccine caused Kaden's injuries, or that his current disabilities are sequelae of his alleged vaccine injury.

19. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of Kaden James Khamis.

END OF STIPULATION

Respectfully submitted,

PETITIONERS:

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DESHAWN KHAMIS

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