

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 10-91 V

Filed: April 6, 2011

Not for Publication

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YANINA PADILLA, as Parent and	*	
Legal Representative of her	*	
Minor Son, ALEXIS PADILLA,	*	
	*	Damages decision based on Stipulation;
Petitioner,	*	DTaP vaccine, IPV, PCV, RV, HiB
	*	vaccines, strep infection
v.	*	
	*	
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

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Ramon Rodriguez III, M.D., Richmond, VA, for petitioner.  
Claudia B. Gangi, Washington, DC, for respondent.

**MILLMAN, Special Master**

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On April 6, 2011, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioner alleged that vaccinee Alexis suffered from a strep infection in his right hip joint and sequelae injuries following DTaP, IPV, PCV, RV and HiB vaccines. Respondent denies that vaccinee's injuries were caused in fact by his vaccinations. Nonetheless, the parties agreed to resolve this matter informally.

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 Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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

The court 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 **\$10,338.49** in the form of a check made payable to petitioner and Healthcare Recoveries c/o Lovelace Health Plan;
- b. A lump sum of **\$29,661.51** in the form of a check payable to petitioner as guardian/conservator of Alexis'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.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: April 6, 2011

/s/ Laura D. Millman

Laura D. Millman  
Special Master

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<sup>2</sup> 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.



leg as a sequela of his vaccine injury and that he has 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 on behalf of Alexis as a result of his condition.

6. Respondent denies that the vaccines caused Alexis's right hip infection or any current disabilities.

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 \$10,338.49 in the form of a check payable to petitioner and Healthcare Recoveries c/o Lovelace Health Plan. This amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of New Mexico may have against any individual as a result of any Medicaid payments the State of New Mexico has made to or on behalf of Alexis Padilla from the date of his eligibility for benefits through the date of judgment in this case as a result of his alleged vaccine-related injury suffered on or about April 20, 2007, under Title XIX of the Social Security Act; and

b. A lump sum of \$29,661.51 in the form of a check payable to petitioner as guardian/conservator of Alexis's estate. This amount represents compensation for all remaining 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 by entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 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, the money provided pursuant to this Stipulation will be used solely for the benefit of Alexis 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. 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 Alexis's estate under the laws of the State of New Mexico. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Alexis's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Alexis Padilla 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/conservator of the estate of Alexis Padilla upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of Alexis, on behalf of herself, Alexis, 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 Alexis resulting from, or alleged to have resulted from, the DTaP, IPV, PCV, RV, and/or Hib vaccinations administered on April 11, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about February 16, 2010, in the United States Court of Federal Claims as petition No. 10-91V.

15. If Alexis 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 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 DTaP, IPV, PCV, RV, and/or Hib vaccinations administered on April 11, 2007, caused Alexis's right hip infection or current disabilities.

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

END OF STIPULATION

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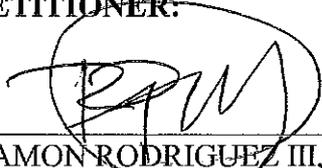
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Respectfully submitted,

**PETITIONER:**

Yanina Padilla  
YANINA PADILLA

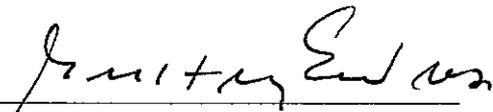
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