

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 13-422V

December 27, 2013

Not to be Published

SEAN VANYO and KELLY VANYO, *
parents and natural guardians of *
C.V., a minor, *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Jeffrey A. Golvash, Pittsburgh, PA, for petitioners.
Darryl R. Wishard, Washington, DC, for respondent.

Damages decision based on
proffer; RotaTeq vaccine;
intussusception

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On June 26, 2013, petitioners filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10-34 (2012), alleging that RotaTeq vaccine administered to their son C.V. on June 30, 2010, caused C.V.'s intussusception, which required surgical intervention.

¹ Because this decision contains a reasoned explanation for the special master's action in this case, the special master 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, 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. If the special master, upon review, agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access.

On December 13, 2013, respondent filed her Rule 4(c) Report, conceding that petitioners are entitled to compensation for C.V.'s intussusception. On December 16, 2013, the undersigned issued a Ruling on Entitlement in favor of petitioners.

On December 27, 2013, respondent filed a Proffer on Damages. The undersigned finds the terms of the Proffer to be reasonable. Based on the record as a whole, the special master finds that petitioners are entitled to the award on behalf of their son as stated in the Proffer. Pursuant to the terms stated in the attached Proffer, the court awards the following:

A lump sum payment of **\$35,000.00**, representing compensation for actual and projected pain and suffering, payable to counsel of record pursuant to an Order of the Court of Common Pleas of Westmoreland County, Pennsylvania, with instructions for counsel to deposit said proceeds in a savings account or certificate of deposit in a federally insured bank, savings and loan association, or credit union.

The savings account or certificate of deposit shall be marked "NOT TO BE WITHDRAWN UNTIL THE MINOR REACHES THE AGE OF MAJORITY OR BY FURTHER ORDER OF COURT."

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.

December 27, 2013
DATE

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, either separately or jointly, filing a notice renouncing the right to seek review.

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

_____)	
SEAN VANYO and KELLY VANYO,)	
parents and natural guardians of _____)	
_____ a minor, <i>c.v.</i>)	
)	
Petitioners,)	No. 13-422V ECF
)	
v.)	Special Master Millman
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On June 26, 2013, petitioners, on behalf of their son, *c.v.* _____ filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986 (the "Vaccine Act"), as amended. 42 U.S.C. §§ 300aa-1 *c.v.* et seq. Petitioners allege that, after _____ received RotaTeq vaccine on June 30, 2010, he suffered from intussusception, requiring a surgical intervention. Petitioners allege a theory based on causation-in-fact. The Secretary of Health and Human Services ("respondent") filed a Vaccine Rule 4(c) report, conceding that *c.v.* _____ suffered from intussusception requiring surgical intervention after receipt of RotaTeq vaccine, and recommending that petitioner be awarded compensation. Respondent hereby submits the following proffer regarding the award of compensation.

I. Items of Compensation

A. Future Medical Care Expenses

Respondent proffers that based on the evidence of record, Petitioners are not entitled to an award for projected unreimbursable medical care expenses for *c.v.* _____ incurred from the date

of judgment as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(1)(A). Petitioners agree.

B. Lost Future Earnings

Respondent proffers that based upon the evidence of record, ^{C.V.} [REDACTED] has not, and he is not likely to suffer a loss of earnings as a result of her vaccine injury. Accordingly, Petitioners should not be awarded lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Petitioners agree.

C. Pain and Suffering

Respondent proffers that Petitioners should be awarded a lump sum of \$35,000.00 for ^{C.V.'s} [REDACTED] actual and projected pain and suffering as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(4). Petitioners agree.

D. Past Unreimburseable Expenses

Respondent proffers that based upon the evidence of record, Petitioners have not incurred any past unreimbursable expenses related to ^{C.V.'s} [REDACTED] vaccine-related injury. Petitioners agree.

E. Medicaid Lien

Petitioners represent that there are no outstanding Medicaid liens related to ^{C.V.'s} [REDACTED] vaccine-related injury.

II. Form of the Award

The parties recommend that the compensation provided to Petitioners, to be received on behalf of ^{C.V.} [REDACTED] should be made through lump sum payment. Petitioners agree to obtain a court order from the Court of Common Pleas of Westmoreland County, Pennsylvania, instructing counsel of record to deposit said proceeds in a savings account or certificate of deposit in a

federally insured bank, savings and loan association or credit union. The savings account or certificate of deposit shall be marked "NOT TO BE WITHDRAWN UNTIL THE MINOR REACHES THE AGE OF MAJORITY OR BY FURTHER ORDER OF COURT." The parties request that the special master's decision and the Court's judgment award the following:

III. Summary of Recommended Payment Following Judgment

- A. A lump sum payment of \$35,000.00, representing compensation for actual and projected pain and suffering, payable to counsel of record pursuant to an Order of the Court of Common Pleas of Westmoreland County, Pennsylvania, with instructions for counsel to deposit said proceeds in a savings account or certificate of deposit in a federally insured bank, savings and loan association or credit union.

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

GLENN A. MACLEOD
Senior Trial Counsel
Torts Branch, Civil Division

/s/Darryl R. Wishard
DARRYL R. WISHARD
Trial Attorney
Torts Branch, Civil Division
U. S. Department of Justice
P.O. Box 146, Benjamin Franklin Station
Washington, D.C. 20044-0146
Direct dial: (202) 616-4357
Fax: (202) 616-4310

Dated: December 27, 2013