

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

KIMBERLY HICKS, as Parent and *
Legal Representative of CHASEN HICKS, *

Petitioner, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 09-028V
Special Master Christian J. Moran

Filed: December 15, 2011

Stipulation; Diphtheria-Tetanus-
acellular Pertussis vaccine;
seizure disorder.

UNPUBLISHED DECISION¹

Sean F. Greenwood, Gauthier Houghtaling and Williams, Houston, TX, for Petitioner;
Debra A. Filteau Begley, U.S. Department of Justice, Washington, D.C., for Respondent.

On December 14, 2011, the parties filed a joint stipulation concerning the petition for compensation filed by Kimberly Hicks, as parent and legal representative of her son, Chasen Hicks (“Chasen”) on January 13, 2009. In her petition, the petitioner alleged that the Diphtheria-Tetanus-acellular Pertussis (“DTaP”) vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which Chasen received on January 13, 2006, caused petitioner to suffer from a seizure disorder, the effects of which lasted for more than six months.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Respondent denies that Chasen's seizure disorder, or the sequella of that condition, or any other injury, was caused-in-fact by his DTaP vaccination.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$167,797.61 in the form of a check payable to petitioner as guardian/conservator of Chasen Hick's estate; and**
- B. A lump sum payment of \$7,202.39 made payable for past unreimbursable out-of-pocket medical expenses.**

The amounts represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 9-28V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.
IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

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KIM HICKS, as parent and legal
representative of CHASEN HICKS,

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v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

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No. 09-28V
SPECIAL MASTER
CHRISTIAN J. MORAN
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Chasen Hicks ("Chasen"), petitioner 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 Chasen's receipt of the Diphtheria-Tetanus-acellular Pertussis ("DTaP") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Chasen received his DTaP, Haemophilus Influezae Type B ("HIB"), Pneumococcal conjugate ("PCV"), and Polio ("IPV") immunizations on January 13, 2006.
3. These vaccines were administered within the United States.
4. Petitioner alleges that Chasen suffers from a seizure disorder that was caused-in-fact by his DTaP vaccination and that he has suffered the 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 Chasen as a result of his condition.

6. Respondent denies that Chasen's seizure condition, or the sequella of that condition, or any other injury, was caused-in-fact by his DTaP vaccination.

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 \$167,797.61 in the form of a check payable to petitioner as guardian/conservator of Chasen Hicks's estate; and
- b. A lump sum of \$7,202.39 made payable to petitioner for past unreimbursable out-of-pocket medical expenses.

The amounts in this paragraph include 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 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, 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, litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation, will be used solely for the benefit of Chasen 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 Chasen's estate under the laws of the State of Texas. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Chasen's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Chasen Hicks 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 Chasen Hicks upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of Chasen, on behalf of herself, Chasen, 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 Chasen resulting from, or alleged to have resulted from, the DTaP, HIB, PCV, and IPV vaccinations administered on January 13, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about January 13, 2009, in the United States Court of Federal Claims as petition No. 09-28V.

15. If Chasen 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 Chasen's seizure condition or residual disability, or any other injury, was caused-in-fact by his D'TaP vaccination.

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 Chasen Hicks.

END OF STIPULATION

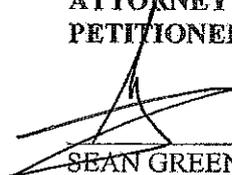
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Respectfully submitted,

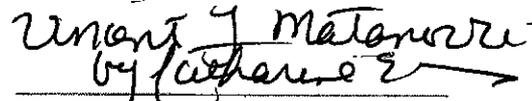
PETITIONER:


KIM HICKS

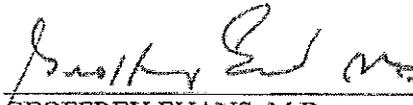
**ATTORNEY OF RECORD FOR
PETITIONER:**


SEAN GREENWOOD
Gauthier, Houghtaling, & Williams
2323 South Shepherd Drive, Suite 1002
Houston, TX 77019
(713) 343-1614

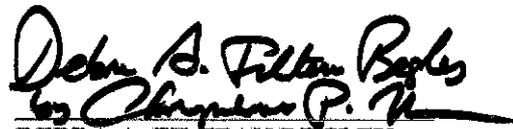
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


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, 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

**ATTORNEY OF RECORD FOR
RESPONDENT:**


DEBRA A. FILTEAU BEGLEY
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4181

14 Dec. 2011