

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

MEGAN E. HOMOLKA, as the Parent, *
and Natural Guardian of *
KADEN HOMOLKA, an Infant, *

No. 10-348V
Special Master Christian J. Moran

Petitioner, *

Filed: December 13, 2012

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Stipulation; diphtheria-tetanus-acellular
pertussis vaccine; hepatitis B vaccine;
inactivated poliovirus vaccine; influenza
vaccine; seizure disorder; developmental
delays; developmental disability

Respondent. *

UNPUBLISHED DECISION¹

Mark T. Sadaka, Law Office of Sadaka Associates, LLC, Englewood, NJ, for Petitioner;
Ryan D. Pyles, U.S. Department of Justice, Washington, D.C., for Respondent.

On December 12, 2012, the respondent filed a joint stipulation concerning the petition for compensation filed by Megan E. Homolka, as the parent and natural guardian of her minor son Kaden Homoloka (“Kaden”), on June 7, 2010. In her petition, petitioner alleges that the diphtheria-tetanus-acellular pertussis, hepatitis B, and/or inactivated poliovirus vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which Kaden received on June 15, 2007, either singly or in combination, caused Kaden to develop a seizure disorder and developmental delays/disability.² Petitioner further alleges that Kaden experienced

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

² Petitioner, through an expert report, additionally alleges that a December 20, 2007 influenza vaccination either caused or significantly aggravated injury to Kaden. Accordingly, the stipulation additionally 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 of the stipulation, for any and all claims that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims,

the residual effects of this injury for more than six months. Petitioner represents 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.

Respondent denies that immunizations, either singly or in combination, are the cause of Kaden's alleged seizure disorder, developmental delays/disability, and/or any other injury.

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 \$7,506.23, which amount represents reimbursement of a State of Iowa Medicaid lien, in the form of a check payable jointly to petitioner and**

**Iowa Medicaid Enterprise
Attn: IME Case No. 113796
100 Army Post Rd.
Des Moines, IA 50315.**

Petitioner agrees to endorse this payment to the State; and

- B. A lump sum payment of \$25,000.00 in the form of a check payable to Megan E. Homolka as guardian of the estate of Kaden Homolka. This amount represents all remaining compensation for 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 10-348V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jay All, at (202) 357-6353.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

alleging that a vaccination of whatever nature administered to Kaden in the year 2007 caused him injury and/or significantly aggravated an alleged injury.

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

MEGAN E. HOMOLKA, as Parent and
Natural Guardian of KADEN HOMOLKA, an
Infant,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 10-348V
Special Master Christian J. Moran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Kaden Homolka ("Kaden"), petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, as amended, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Kaden's receipt of diphtheria-tetanus-acellular pertussis, hepatitis B, and/or inactivated poliovirus vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).¹
2. Kaden received his immunizations on or about June 15, 2007.
3. The vaccines were administered within the United States.

¹ Petitioner, through an expert report, additionally alleges that a December 20, 2007 influenza vaccination either caused or significantly aggravated injury to Kaden. Accordingly, this Stipulation additionally 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 below, for any and all claims that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, alleging that a vaccination of whatever nature administered to Kaden in the year 2007 caused him injury and/or significantly aggravated an alleged injury.

4. Petitioner alleges that the vaccines, either singly or in combination, caused Kaden to develop a seizure disorder and developmental delays/disability and that he 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 Kaden as a result of his condition.

6. Respondent denies that immunizations, either singly or in combination, are the cause of Kaden's alleged seizure disorder, developmental delays/disability, and/or any other injury.

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 **\$7,506.23**, which amount represents reimbursement of a State of Iowa Medicaid lien, in the form of a check payable jointly to petitioner and

Iowa Medicaid Enterprise
Attn: IME Case No. 113796
100 Army Post Rd.
Des Moines, IA 50315.

Petitioner agrees to endorse this payment to the State; and

- b. A lump sum of **\$25,000.00** in the form of a check payable to petitioner as guardian of the estate of Kaden Homolka. This amount represents all remaining compensation for 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 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. 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 and litigation costs, and past unreimbursable expenses, 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as executor/administrator of the Estate of Kaden Homolka under the laws of the State of Iowa.

14. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of Kaden, on behalf of herself, Kaden, and Kaden's heirs, executors, administrators, successors and/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 Kaden resulting from, or alleged to have resulted from, the vaccinations administered on or about June 15, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about June 7, 2010, in the United States Court of Federal Claims as petition No. 10-348V, as well as all other vaccinations received by Kaden in the year 2007, including but not limited to the influenza vaccine administered on or about December 20, 2007.

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 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

Respectfully submitted,

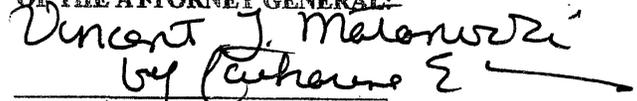
PETITIONER:


MEGAN E. HOMOLKA

**ATTORNEY OF RECORD FOR
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DATED: 12-7-12