

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

ASHLEY HUBBARD and *
TODD HUBBARD *
Personal representative of the Estate of *
JUDE HUBBARD, Deceased, *

No. 11-14V
Special Master Christian J. Moran

Petitioner, *

v. *

Filed: October 16, 2012

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Stipulation; vaccines;
death.

Respondent. *

UNPUBLISHED DECISION¹

Nicholas E. Bunch, White, Getgey & Meyer, Cincinnati, OH, for Petitioners;
Jennifer L. Reynaud, U.S. Department of Justice, Washington, D.C., for Respondent.

On October 12, 2012, the parties filed a joint stipulation concerning the petition for compensation filed by Ashley Hubbard and Todd Hubbard, as personal representatives of the estate of Jude Hubbard (“Jude”), on January 6, 2011. In their petition, the petitioners alleged that the diphtheria-tetanus-acellular pertussis (“DTaP”), haemophilus influenza (“Hib”), inactivated polio (“IPV”), pneumococcal conjugate (“PCV”), hepatitis B, and rotavirus vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which Jude received on January 12, 2009, caused Jude’s death.

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.

Respondent denies that Jude suffered any injury as a result of his vaccinations administered on January 12, 2009, and denies that Jude's death was a sequel of any alleged vaccine 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 \$180,000.00 in the form of a check payable to petitioners as legal representatives of the estate of Jude Hubbard. This amount 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 11-14V 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

4. Petitioners allege that Jude's death was caused by his January 12, 2009, DTaP, Hib, IPV, PCV, hepatitis B, and rotavirus vaccinations.

5. Petitioners represents that there has been no prior award or settlement of a civil action for damages on behalf of Jude as a result of any alleged injury or his death.

6. Respondent denies that Jude suffered any injury as a result of his vaccinations administered on January 12, 2009, and denies that Jude's death was a sequel of any alleged vaccine 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 petitioners have 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 \$180,000.00 in the form of a check payable to petitioners as legal representatives of the estate of Jude Hubbard. 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. Petitioners represent that they presently are duly authorized to serve as personal representatives of Jude's estate under the laws of the State of Indiana.

13. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacity, and on behalf of Jude's 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. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of petitioners' child resulting from, or alleged to have resulted from, the January 12, 2009, DTaP, Hib, IPV, PCV, hepatitis B, and rotavirus vaccinations, as alleged by petitioners in a petition for vaccine compensation filed

on or about January 6, 2011, in the United States Court of Federal Claims as petition No. 11-14V.

14. 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.

15. 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 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the DTaP, Hib, IPV, PCV, hepatitis B, or rotavirus vaccinations vaccine caused Jude's death or any other injury.

17. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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Respectfully submitted,

PETITIONERS:

Ashley Hubbard

ASHLEY HUBBARD

Todd Hubbard

TODD HUBBARD

**ATTORNEY OF RECORD
FOR PETITIONERS:**

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Dated October 12, 2012