

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

GABRIELLE MARTIN,
As the Administrator of the
Estate of her deceased infant daughter,
BREANNA MARSHALL,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

No. 09-809V
Special Master Christian J. Moran

Filed: May 17, 2011

Stipulation; Pediarix; Hib;
pneumococcal conjugate;
rotavirus vaccine

UNPUBLISHED DECISION¹

Mark T. Sadaka, Mark T. Sadaka, MSPH, Esq, Englewood, NJ, for Petitioner;
Ryan D. Pyles, U.S. Department of Justice, Washington, D.C., for Respondent.

On May 12, 2011, the parties filed a joint stipulation concerning the petition for compensation filed by Gabrielle Martin, as the administrator of the estate of her deceased infant daughter, Breanna Marshall, on November 20, 2009. In her petition, the petitioner alleged that Breanna’s receipt of the vaccines, Pediarix, Hib, pneumococcal conjugate, and/or a rotavirus vaccine, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which Breanna received on November 29, 2007, were the cause-in-fact of

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

anaphylactic shock, resulting in Breanna's death, the effects of which lasted for more than six months.

Respondent denies that one or more of the vaccines received by Breanna on November 29, 2007, caused her to suffer anaphylactic shock and/or any other injury; and denies that Breanna's death occurred as the result of a vaccine-related 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 \$25,000.00 in the form of a check payable to petitioner as administrator of the Estate of Breanna Marshall. 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 9-809V 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

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of the Estate of Breanna Marshall as a result of her alleged condition, resulting in death.

6. Respondent denies that one or more of the vaccines received by Breanna on November 29, 2007, caused her to suffer anaphylactic shock and/or any other injury; and denies that Breanna's death occurred as the result of a vaccine-related 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 payment:

A lump sum of **\$25,000.00** in the form of a check payable to petitioner as administrator of the Estate of Breanna Marshall. 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 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. 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.

11. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as administrator of the Estate of Breanna Marshall under the laws of the State of Illinois. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as administrator of the Estate of Breanna Marshall. If petitioner is not authorized by a court of competent jurisdiction to serve as administrator of the Estate of Breanna Marshall 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 executor/administrator of the Estate of Breanna Marshall upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of the Estate of Breanna Marshall, on behalf of herself and Breanna's 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 Breanna resulting from, or alleged to have resulted from, the vaccinations administered on or about November 29, 2007, as

alleged by petitioner in a petition for vaccine compensation filed on or about November 20, 2009, in the United States Court of Federal Claims as petition No. 09-809V.

13. 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.

14. 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. 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.

15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that one or more of the vaccines received by Breanna on November 29, 2007, caused her to suffer from anaphylactic shock and/or any other injury; or that Breanna's death occurred as the result of a vaccine-related injury.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of the Estate of Breanna Marshall.

END OF STIPULATION

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Respectfully submitted,

PETITIONER:


GABRIELLE MARTIN

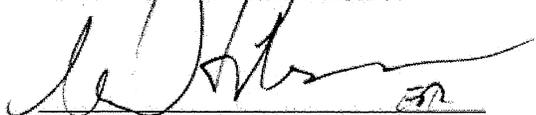
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Dated: May 12, 2011