

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

CHRISTINA McCLAIN and COREY *
McCLAIN, as parents and natural *
guardians of N.M., a minor, *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 09-778V

Special Master Christian J. Moran

Filed: January 29, 2013

Stipulation; influenza; rotavirus, Diphtheria-
Tetanus-acellular Pertussis (DTaP), hepatitis
B, pneumococcal vaccines; Guillain-Barré
Syndrome (GBS)

UNPUBLISHED DECISION¹

Diana L. Stadelnikas, Maglio, Christopher & Toale, Sarasota, FL, for Petitioner;
Michael P. Milmo, U.S. Department of Justice, Washington, D.C., for Respondent.

On January 28, 2013, respondent filed a joint stipulation concerning the petition for compensation filed by Christina and Corey McClain on behalf of their son, N.M., on November 13, 2009. In their petition, petitioners alleged that the influenza (“flu”), rotavirus, Diphtheria-Tetanus-acellular Pertussis (“DTaP”), hepatitis B, and pneumococcal vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which N.M. received on or about October 18, 2007, and a second flu vaccination received on or about November 20, 2007, caused N.M. to suffer Guillain-Barré Syndrome (“GBS”). Petitioners further allege that N.M. experienced residual effects of this injury for more than six months. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of N.M. as a result of his condition.

Respondent denies that any of the vaccines caused N.M. to develop GBS or any other injury and further denies that his current disabilities are sequelae of a vaccine-related injury. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The

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.

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 \$8,181.31 in the form of a check payable to petitioners as guardians/conservators of N.M.'s estate; and**
- B. A lump sum of \$1,818.69, which amount represents reimbursement of a State of Florida Medicaid lien, in the form of a check payable jointly to petitioners and**

**Agency for Health Care Administration
c/o ACS Recovery Services
P.O. Box 12188
Tallahassee, FL 32317-2188
Attn: Mr. Braxton Wilson**

Petitioners agree to endorse this check to the Agency for Health Care Administration.

These amounts represent 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 09-778V according to this decision and the attached stipulation.²

The status conference previously set for Wednesday, January 30, 2013 is **CANCELLED**.

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

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

consequence of the vaccinations he received on October 18, 2007, and November 20, 2007, and further allege that he experienced residual effects of this injury for more than six months.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of N.M. as a result of his condition.

6. Respondent denies that any of the vaccines caused N.M. to develop GBS or any other injury and further denies that his current disabilities are a sequelae 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 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 payments:

- a. A lump sum of \$8,181.31 in the form of a check payable to petitioners as guardians/conservators of N.M.'s estate; and
- b. A lump sum of \$1,818.69, which amount represents reimbursement of a State of Florida Medicaid lien, in the form of a check payable jointly to petitioners, and

Agency for Health Care Administration
c/o ACS Recovery Services
P. O. Box 12188
Tallahassee, Florida 32317-2188
Att: Mr. Braxton Wilson

Petitioners agree to endorse this check to the Agency for Health Care Administration.

These amounts represent 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 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 entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 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 N.M. 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. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of N.M.'s estate under the laws of the State of Florida.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities and as legal representatives of N.M., on behalf of themselves, N.M., his 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, suspected or unsuspected personal injuries to or death of N.M. resulting from, or alleged to have resulted from any of the vaccinations, administered on or about October 18, 2007, and November 20, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about November 13, 2009, in the United States Court of Federal Claims as petition No. 09-778V.

15. If N.M. 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. 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 any of the vaccines he received caused N.M.'s alleged GBS or any other injury, or his current disabilities.

19. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of N.M.

END OF STIPULATION

Respectfully submitted,

PETITIONERS:

Christina McClain
CHRISTINA MCCLAIN

Corey McClain
COREY MCCLAIN

**ATTORNEY OF RECORD FOR
PETITIONERS:**

Diana L. Stadelnikas
DIANA L. STADELNIKAS, ESQ.
Maglio, Christopher & Toale
1701 Main Street, Suite 710
Sarasota, FL 34236
(941) 952-5242

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**

Vincent J. Matanoski
VINCENT J. MATANOSKI
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:**

Vito Caserta
VITO CASERTA, M.D.
Acting Director, Division of
Vaccine Injury Compensation (DVIC)
Director, Countermeasures Injury Compensation
Program (CICP)
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:**

Michael P. Milmo
MICHAEL P. MILMOE
Senior Trial Counsel
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 616-4125

Dated: Dec. 5, 2012