

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

LYDIA MYRELLA MEDINA, *
Legal representative of a Minor Child *
AYERI ADRIANA MEDINA, *

No. 11-311V
Special Master Christian J. Moran

Petitioner, *

Filed: October 15, 2012

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Stipulation; varicella vaccine;
acute disseminated
encephalomyelitis; death.

Respondent. *

UNPUBLISHED DECISION¹

Richard A. Eckerson, Eckerson Law Firm, PLLC, Tomball, TX, for Petitioner;
Claudia B. Gangi, U.S. Department of Justice, Washington, D.C., for Respondent.

On October 11, 2012, the parties filed a joint stipulation concerning the petition for compensation filed by Lydia Myrella Medina, as the legal representative of her child, Ayeri Adriana Medina (“Ayeri”) on May 13, 2011. In her petition, the petitioner alleged that the varicella vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which Ayeri received on April 30, 2009, caused Ayeri to suffer from acute disseminated encephalomyelitis, and also resulted in Ayeri’s death.

Respondent denies that Ayeri’s ADEM or any other injury was caused-in-fact by her varicella vaccination, and denies that the vaccine caused her 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.

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 representative of the estate of Ayeri Adriana Medina. 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 11-311V 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

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

LYDIA MYRELLA MEDINA)	
Legal representative of a Minor Child,)	
AYERI ADRIANA MEDINA,)	
)	
Petitioner,)	
)	
v.)	No. 11-311V
)	Special Master Moran
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On May 12, 2011, Lydia M. Medina (“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 Ayeri Adriana Medina’s receipt of the varicella vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Ayeri received a varicella immunization on April 30, 2009.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Ayeri suffered from acute disseminated encephalomyelitis (“ADEM”), which was caused-in-fact by her varicella vaccination. Petitioner further alleges that Ayeri’s death was a sequelae of her vaccine-related injury.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of Ayeri’s ADEM and/or death.

6. Respondent denies that Ayeri's ADEM or any other injury was caused-in-fact by her varicella vaccination, and denies that the vaccine caused her death.

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 representative of the estate of Ayeri Adriana Medina. 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. 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian of Ayeri'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 of Ayeri's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian of the estate of Ayeri Adriana Medina 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 of the estate of Ayeri Adriana Medina upon submission of written documentation of such appointment to the Secretary.

12. 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.

13. 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 petitioner 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).

14. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of the estate of Ayeri Adriana Medina, and on behalf of Ayeri'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 Ayeri Adriana Medina resulting from, or alleged to have resulted from, the varicella vaccination administered on April 30, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about May 12, 2011, in the United States Court of Federal Claims as petition No. 11-311V.

15. 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.

16. 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.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the varicella vaccine caused Ayeri's ADEM or any other injury or her death.

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

END OF STIPULATION

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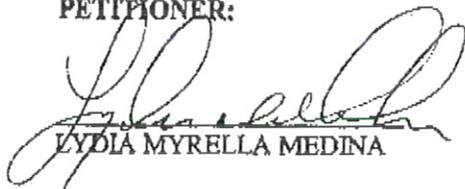
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Respectfully submitted,

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LYDIA MYRELLA MEDINA

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Dated: 10-11-12