

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-737V

Filed: December 11, 2008

Not for publication

MICHELLE ROBINSON,

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Petitioner,

*

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v.

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Damages decision based on stipulation;
GBS following influenza vaccination

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SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

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Respondent.

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Donald P. Edwards, Atlanta, GA, for petitioner.

Michael P. Milmoe, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On December 5, 2008, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioner alleged that she suffered from Guillain-Barré Syndrome (“GBS”) following an influenza vaccination. Respondent denies that petitioner’s GBS was caused in fact by her influenza vaccination. Nonetheless, the parties agreed to resolve this matter informally.

¹ Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this decision 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). Vaccine Rule 18(b) states that 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 constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

The court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards: (1) a lump sum of **\$169,431.65** in the form of a check made payable to petitioner; and (2) and an amount sufficient to purchase the annuity contract described in paragraph 10 of the stipulation.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

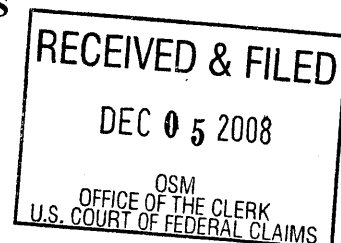
Dated: Dec. 11, 2008

Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS



MICHELLE ROBINSON,)
)
Petitioner,)
v.)
SECRETARY OF HEALTH AND HUMAN)
SERVICES,)
Respondent.)

No. 06-737V
Special Master Millman

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. Petitioner, Michelle Robinson, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to her receipt of the influenza vaccine vaccination, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a)(XIV), as amended.
2. Petitioner received her immunization on October 31, 2005.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she developed Guillain-Barre Syndrome ("GBS") which was caused-in-fact by the influenza immunization she received on October 31, 2005.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of herself as a result of her condition.
6. Respondent denies that petitioner's GBS was caused by her October 31, 2005, influenza vaccination.

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 \$169,431.65, which amount represents compensation for first year post judgment life care expenses (\$15,332.78), pain and suffering (\$146,147.87), and past unreimbursable expenses (\$7,951.00) in the form of a check payable to petitioner;
- b. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company"). The amount described herein represents compensation for all remaining elements of compensation.

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of Michelle Robinson, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for the following items of compensation:

- a. For future un-reimbursable neurology evaluation expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$25.20 to be paid up to the anniversary of the date of judgment in year 2024, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- b. For future un-reimbursable PT evaluation expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$15.60 to be paid up to the anniversary of the date of judgment in year 2013. Then, beginning on the anniversary of the date of judgment in year 2013, an annual amount of \$3.90 to be paid up to the anniversary of the date of judgment in year 2021, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- c. For future un-reimbursable primary care physician and orthopedic expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$62.40 to be paid up to the anniversary of the date of judgment in year 2024, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- d. For future un-reimbursable gastrocnemius lengthening expenses, on the first anniversary of the date of judgment, a lump sum payment of \$381.00, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- e. For future un-reimbursable EMG/NCV bilateral lower extremity expenses, on the anniversary of the date of judgment in 2013, a lump sum payment of \$67.00. Then, on the anniversary of the date of judgment in 2018, a lump sum payment of \$67.00, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- f. For future un-reimbursable Lyrica and Effexor expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$496.00 to be paid for the remainder of Michelle Robinson's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- g. For future un-reimbursable gel arch support, theraband exercise band, grip-it bottle opener, cordless can opener, and multi-purpose jar opener expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$100.57 to be paid for the remainder of Michelle Robinson's life, increasing at the rate of three percent (3%), compounded annually from the date of judgment.
- h. For future un-reimbursable 12" step stool, 6" step stool, wall bar shower unit, and adaptive device expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$181.62 to be paid for the remainder of Michelle Robinson's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

- i. For future un-reimbursable home maintenance and repair expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$3,960.00 to be paid for the remainder of Michelle Robinson's life, increasing at the rate of three percent (3%), compounded annually from the date of judgment.
- j. For future un-reimbursable case manager expenses, on the first anniversary of the date of judgment, a lump sum payment of \$500.00, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- k. For future un-reimbursable van rental expenses, on the first anniversary of the date of judgment, a lump sum payment of \$1,175.00, increasing at the rate of three percent (3%), compounded annually from the date of judgment.
- l. For future un-reimbursable primary care mileage, neurology mileage, and PT evaluation mileage expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$40.17 to be paid up to the anniversary of the date of judgment in year 2013. Thereafter, beginning on the anniversary of the date of judgment in year 2013, an annual amount of \$37.17 to be paid for the remainder of Michelle Robinson's life, increasing at the rate of three percent (3%), compounded annually from the date of judgment.
- m. For future un-reimbursable YMCA expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$432.00 to be paid up to the anniversary of the date of judgment in year 2024, increasing at the rate of three percent (3%), compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment. Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as she, Michelle Robinson, is alive at the time that a particular payment is due. Petitioner shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Michelle Robinson's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a

judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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 special master shall preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

13. Payments made pursuant to paragraph 8 and any amount awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

14. The parties and their attorneys further agree and stipulate that the money provided pursuant to this Stipulation as part of the annuity contract will be used solely for the benefit of petitioner, Michelle Robinson, 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).

15. In return for the payments described in paragraphs 8 and 12, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements,

judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of herself resulting from, or alleged to have resulted from, the influenza vaccination administered to her on October 31, 2005, as alleged by petitioner in a petition for vaccine compensation filed on October 27, 2006, in the United States Court of Federal Claims as petition No. 06-737V.

16. If petitioner should die prior to receiving the payment described in paragraph 8(a), this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

17. 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 null and void at the sole discretion of either party.


18. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 12 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.

19. All rights and obligations of petitioner hereunder shall apply equally to her successors and assigns.

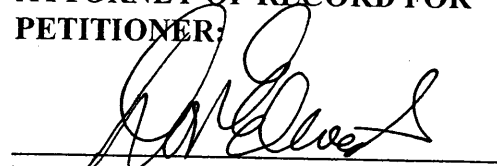
END OF STIPULATION

Respectfully submitted,


PETITIONER:


MICHELLE ROBINSON

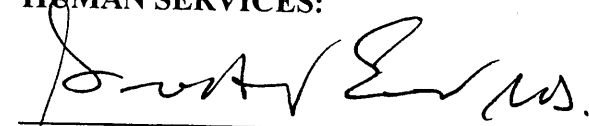
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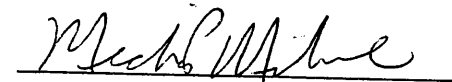
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Dated: December 5, 2008