

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-159V

Filed: June 30, 2009

Not for publication

JOSHUA WINSTEAD and HOLLY *
WINSTEAD, as the Legal Representatives *
of their Minor Son, JEREMY WINSTEAD, *

Petitioners, *

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Curtis Webb, Twin Falls, ID, for petitioners
Julia W. McInerney, Washington, DC, for respondent

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On June 24, 2009, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioners alleged that their son, Jeremy, sustained vaccine-related injuries including Hemophagocytic Lymphohistiocytosis (“HLH”), which was

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.

caused-in-fact by Jeremy's receipt of hepatitis B ("hep B"), diphtheria acellular pertussis ("DTaP"), inactivated polio vaccination ("IPV"), haemophilus influenzae type b ("HIB"), and heptavalent pneumococcal conjugate ("Prevnar") vaccinations on May 11, 2004. Respondent denies that Jeremy suffered from HLH and other associated injuries, denies that his injuries were vaccine-related, and denies that his current disabilities are sequelae of his alleged vaccine-related injuries. Nonetheless, the parties agreed to resolve this matter.

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:

- a. A lump sum payment of **\$5,494.57** in the form of a check payable jointly to petitioners, as guardians/conservators of the estate of Jeremy Winstead, and to the Georgia Department of Community Health, representing Medicaid payments for reimbursement of Georgia's Medicaid expenses; and
- b. A lump sum payment of **\$230,000.00** in the form of a check payable to petitioners, as guardians/conservators of the estate of Jeremy Winstead. This amount represents compensation for all remaining 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 of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: _____

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.

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

JOSHUA AND HOLLY WINSTEAD,)
as legal representatives of)
their minor son, JEREMY WINSTEAD)

Petitioners,)

v.)

SECRETARY OF HEALTH AND)
HUMAN SERVICES,)

Respondent.)

No. 06-0159V

Special Master Laura D. Millman

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, Jeremy Winstead (“Jeremy”), petitioners Joshua and Holly Winstead (“petitioners”) as Parents and Natural Guardians, 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 Jeremy’s receipt of hepatitis B, diphtheria acellular pertussis (“DTaP”), inactivated polio vaccination (“IPV”), haemophilus influenzae type b (“HIB”), and heptavalent pneumococcal conjugate (“Pprevnar”) vaccinations, which vaccines are contained in the Vaccine Injury Table (the “Table”) at 42 U.S.C. § 300aa-14(a); 42 C.F.R. § 100.3(a).
2. Jeremy received the vaccines on or about May 11, 2004.
3. The vaccines were administered within the United States.
4. Petitioners allege that Jeremy sustained vaccine-related injuries including Hemophagocytic Lymphohistiocytosis (“HLH”), which was caused-in-fact by the May 11, 2004

vaccinations. Petitioners further alleges that the sequelae of those injuries persisted for over six months.

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

6. Respondent denies that Jeremy suffered from HLH and other associated injuries, denies that his injuries were vaccine-related, and denies that his current disabilities are sequelae of his alleged vaccine-related injuries.

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 payment of \$5,494.57 in the form of a check payable jointly to petitioners, as guardians/conservators of the estate of Jeremy Winstead, and to the Georgia Department of Community Health, representing Medicaid payments for reimbursement of Georgia's Medicaid expenses; and
- b. A lump sum payment of \$230,000.00 in the form of a check payable to petitioners, as guardians/conservators of the estate of Jeremy Winstead. This amount represents compensation for all remaining 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 special master shall preside over further

proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Payment 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.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of Jeremy 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).

12. 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 Jeremy's estate under the laws of the State of Georgia. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Jeremy's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Jeremy 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(s)/conservator(s) of the estate of Jeremy upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities and as legal representatives of Jeremy, on behalf of themselves, Jeremy, and

his heirs, executors, administrators, successors or assigns, do 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 Jeremy resulting from, or alleged to have resulted from, the hepatitis B, DTaP, IPV, HIB, and Prevnar vaccinations administered on or about May 11, 2004, as alleged by petitioners in a petition for vaccine compensation filed on or about March 1, 2006, in the United States Court of Federal Claims as petition No. 06-159V.

14. If Jeremy should die prior to receiving the payments described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation, or in the event 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.

16. 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 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.

17. All rights and obligations of petitioners hereunder shall apply equally to their successors and assigns as legal representatives of Jeremy.

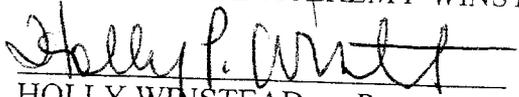
END OF STIPULATION

Respectfully submitted,

PETITIONERS:



JOSHUA WINSTEAD, as Parent and
Natural Guardian of JEREMY WINSTEAD



HOLLY WINSTEAD, as Parent and
Natural Guardian of JEREMY WINSTEAD

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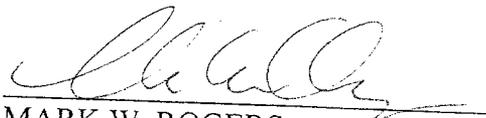
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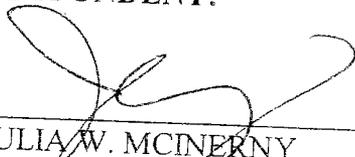
Dated: 6/24/09

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