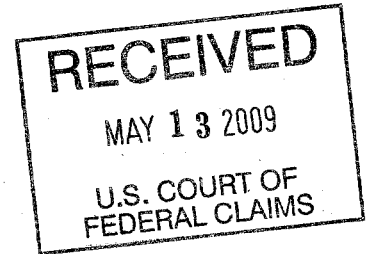


In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS



ROBERTA DEMETSENARE, Personal *
Representative of the Estate of MARCEL *
DEMETSENARE, Deceased *

Petitioner, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 08-289V
Special Master Christian J. Moran

Filed: May 13, 2009

Stipulation, DTaP, Polio (IPV),
measles, mumps, rubella (MMR)
death.

UNPUBLISHED DECISION¹

Gary A Krochmal, Esq., Farmington Hills, Michigan, counsel for Petitioner;
Rebecca J. Trinrud, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On May 12 2009, the parties filed a joint stipulation concerning the petition for compensation filed by Roberta DeMetsenare, on behalf of the estate of her son Marcel DeMetsenare, on April 18, 2008. In her petition, Ms. DeMetsenare alleged that Marcel's death was caused by his receipt of the Diphtheria, Tetanus, and Pertussis (DTaP), Polio (IPV), and Measles, Mumps, and Rubella (MMR) vaccines, which are contained in the Vaccine Injury Table, 42 C.F.R. §100.3 (a), and which Maxwell received on March 22, 2006.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

Respondent denies that Marcel suffered an adverse reaction to his vaccinations administered on March 22, 2006, and denies that Marcel's death was a sequela of his alleged vaccine reaction.

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.

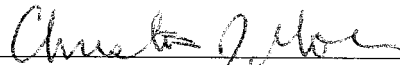
Damages awarded in that stipulation include:

A lump sum payment of \$100,000.00 in the form of a check payable to the petitioner as the legal representative of the estate of Marcel DeMetsenare. This amount represents compensation for all damages that would be available pursuant to 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 08-289V according to this decision and the attached stipulation.

Any questions may be directed to Francina Segbefia at (202) 357-6358.

IT IS SO ORDERED.



Christian J. Moran
Special Master

4. Petitioner alleges that Marcel's death was caused by his receipt of the DTaP, IPV, and MMR vaccines.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Marcel as a result of his death.

6. Respondent denies that Marcel suffered an adverse reaction to his vaccinations administered on March 22, 2006, and denies that Marcel's death was a sequela of his alleged vaccine reaction.

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 a lump sum payment of \$100,000.00 in the form of a check payable to petitioner as legal representative of the estate of Marcel DeMetsenare. 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 duly authorized to serve as personal representative of Marcel's estate under the laws of the State of Michigan.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of Marcel DeMetsenare's estate, and on behalf of Marcel's 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, and the death of Marcel resulting from, or alleged to have resulted from, the DTaP, IPV, and MMR vaccinations administered on March 22, 2006, as alleged by petitioner in a petition for vaccine

compensation filed on or about April 18, 2008, in the United States Court of Federal Claims as petition No. 08-0289V.

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 null and void at the sole discretion of either party.

14. 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.

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

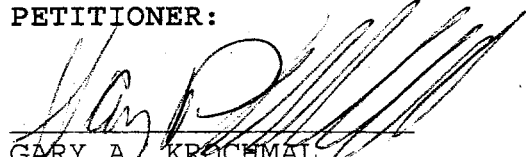
END OF STIPULATION

Respectfully submitted,


PETITIONER:


ROBERTA DEMETSENARE

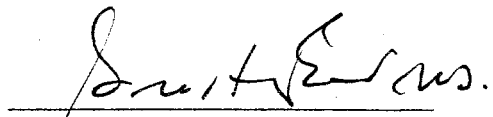
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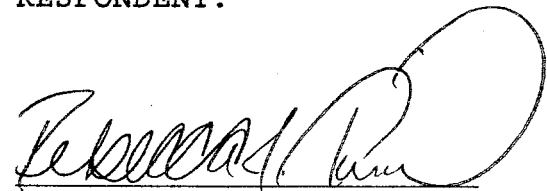
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Dated: March 19, 2009