

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

CATHERINE GUIDRY, Parent of *
HAYDEN GUIDRY, a minor, *

Petitioner, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 09-72V
Special Master Christian J. Moran

Filed: July 23, 2010

Stipulation; diphtheria tetanus
acellular pertussis (DTaP),
hemophilus influenza type b,
rotavirus, pneumococcal conjugate;
hypoproteinemia; secondary
hypogammaglobulinemia

UNPUBLISHED DECISION¹

Ronald C. Homer, Esq., Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioner;
Althea Walker Davis, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On July 20, 2010, the parties filed a joint stipulation concerning the petition for
compensation filed by Catherine Guidry, on behalf of her son, Hayden Guidry (“Hayden”) on
February 5, 2009. In her petition, Ms. Guidry alleged that the diphtheria-tetanus-acellular
pertussis (DtaP), hemophilus influenza type b, rotavirus, and pneumococcal vaccines, which are
contained in the Vaccine Injury Table, 42 C.F.R. §100.3(a), and which Hayden received on
November 28, 2007, caused Hayden to sustain the first symptom or manifestation of the onset of
hypoproteinemia with protein-losing enteropathy and secondary hypogammaglobulinemia within

¹ Because this unpublished decision contains a reasoned explanation for the special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).

five days of his vaccination, and that Hayden experienced the residual effects of these injuries for more than six months.

Respondent denies that Hayden suffered the onset of hypoproteinemia with protein-losing enteropathy and secondary hypogammaglobulinemia within five days of his vaccinations and denies that the vaccinations caused his current disabilities.

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 \$15,000.00, in the form of a check payable to petitioner as guardian/conservator of Hayden's estate. This amount represents compensation for all damages 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 09-72V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Francina Segbefia, 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

CATHERINE GUIDRY, parent of)
HAYDEN GUIDRY, a minor,)
)
Petitioner,)
v.)
)
SECRETARY OF HEALTH)
AND HUMAN SERVICES,)
)
Respondent.)

No. 09-72V
Special Master Christian Moran

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Hayden Guidry ("Hayden"), petitioner Catherine Guidry 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 Hayden's receipt of the Diphtheria-Tetanus-acellular Pertussis ("DTaP"), hemophilus influenzae type b, rotavirus, and pneumococcal conjugate vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3.
2. Hayden received his immunizations on November 28, 2007.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Hayden sustained the first symptom or manifestation of the onset of hypoproteinemia with protein-losing enteropathy and secondary hypogammaglobulinemia within five days of his vaccinations, and that Hayden experienced residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action

for damages on behalf of Hayden as a result of his condition.

6. Respondent denies that Hayden suffered the onset of hypoproteinemia with protein-losing enteropathy and secondary hypogammaglobulinemia within five days of his vaccinations and denies that the vaccines caused his current disabilities.

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 \$15,000.00 in the form of a check payable to petitioner as guardian/conservator of Hayden's estate. 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. 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.

12. 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 Hayden 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Hayden's estate under the laws of the State of Louisiana. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Hayden's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Hayden Guidry 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/conservator of the estate of Hayden Guidry upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of Hayden, on behalf of herself, Hayden, and his 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. § 300 aa-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 Hayden Guidry resulting from, or alleged to have resulted from, the DTaP, hemophilus influenzae type b, rotavirus, and pneumococcal conjugate vaccines administered on November 28, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about February 5, 2009, in the United States Court of Federal Claims as petition No. 09-72V.

15. If Hayden should die prior to entry of the judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

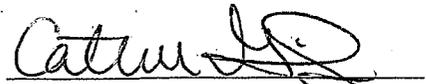
16. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this 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, 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, 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.

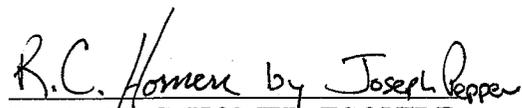
18. Petitioner hereby authorizes the respondent to disclose documents filed by petitioner

Respectfully submitted,

PETITIONER:


CATHERINE GUIDRY

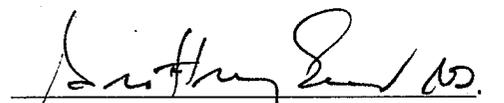
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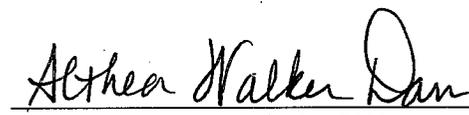
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Dated: 20 July 2010