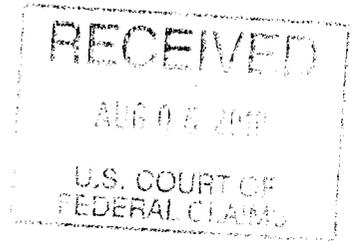


In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS



GLINDA MORSE, Individually and as *
the Parent and Natural Guardian of *
KADEN MORSE, A Minor, *

Petitioner, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 09-0023V
Special Master Christian J. Moran

Filed: August 5, 2010

Stipulation; varicella vaccine;
ataxia.

UNPUBLISHED DECISION¹

J. Stanley Chapman, Esq., Equels Law Firm, Tallahassee, FL, for Petitioner;
Rebecca J. Trinrud, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On July 30, 2010, the parties filed a joint stipulation concerning the petition for compensation filed by Glinda Morse, on behalf of her son, Kaden Morse ("Kaden"), on January 12, 2009. In her petition, Ms. Morse alleged that the varicella vaccine, which is contained in the Vaccine Injury Table, 42 C.F.R. §100.3(a), and which Kaden received on October 11, 2006, caused Kaden to develop ataxia, and that he experienced the residual effects of his injury for more than six months.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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, 115 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 the varicella vaccine caused Kaden's ataxia and 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. **A lump sum payment of \$75,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and**
- B. **A lump sum payment of \$7,875.00, in the form of a check payable to petitioner and petitioner's attorney, J. Stanley Chapman, Esq., for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e); and**
- C. **In compliance with General Order #9, a lump sum payment of \$727.12 in the form of a check made payable to petitioner only for out-of-pocket expenses incurred by petitioner in proceeding on the petition, as authorized pursuant to 42 U.S.C. § 300aa-15(e).**

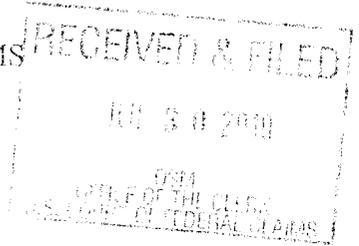
In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 09-023V according to this decision and the attached stipulation.

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

IT IS SO ORDERED.


Christian J. Moran
Special Master

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



GLINDA MORSE,)
Individually and as the parent and)
natural guardian of)
KADEN MORSE,)
a minor,)
)
Petitioner,)
v.)
)
SECRETARY OF HEALTH AND)
HUMAN SERVICES)
)
Respondent.)
_____)

No. 09-23V
Special Master Moran

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Kaden Morse ("Kaden"), 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 Kaden'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. Kaden received his varicella immunization on October 11, 2006.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Kaden developed ataxia as a result of his October 11, 2006, vaccination and that he 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 Kaden as a result of his condition.

6. Respondent denies that the varicella vaccination caused Kaden's ataxia and 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 payments:

A. A lump sum of \$75,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and

B. A lump sum of \$7,875.00 in the form of a check payable to petitioner and petitioner's attorney, J. Stanley Chapman, for attorney's fees and costs available under 42 U.S.C. §300aa-15(e), and, in addition, in compliance with General Order #9, a lump sum of \$727.12, in the form of a check payable to petitioner for out-of-pocket expenses incurred by petitioner in proceeding on this petition.

9. 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.

10. Payments made pursuant to paragraph 8 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. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees, 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).

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

13. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of Kaden, on behalf of herself, Kaden, 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 Kaden resulting from, or alleged to have resulted from, the varicella vaccination administered on October 11, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about January 12, 2009, in the United States Court of Federal Claims as

petition No. 09-23V.

14. If Kaden 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.

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. 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.

17. Petitioner hereby authorizes the respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

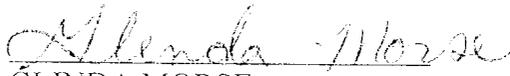
18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the varicella vaccination caused Kaden's ataxia or his current disabilities.

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

END OF STIPULATION

Respectfully submitted,

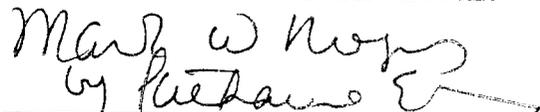
PETITIONER:


GLINDA MORSE

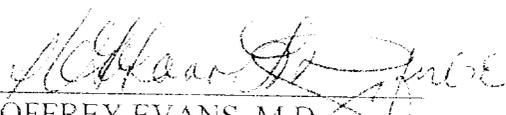
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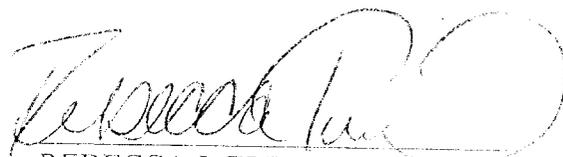
**AUTHORIZED REPRESENTATIVE
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Dated: July 30, 2010