

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

LINDA VALDEZ,
Natural mother and Guardian for
KAITLYNN VALDEZ,
a minor,
Petitioner,

No. 08-702V
Special Master Christian J. Moran

Filed: August 6, 2010

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,
Respondent.

Stipulation; hepatitis B vaccine;
influenza (flu) vaccine; seizure
disorder, developmental delays.

UNPUBLISHED DECISION¹

Carol L. Gallagher, Esq., Gallagher & Gallagher, Somers Point, NJ, for Petitioner;
Ryan D. Pyles, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On August 2, 2010, the parties filed a joint stipulation concerning the petition for
compensation filed by Linda Valdez, on behalf of her daughter, Kaitlynn Valdez ("Kaitlynn") on
October 3, 2008. In her petition, Ms. Valdez alleged that the Hepatitis B vaccine and/or the
influenza ("flu") vaccine, both of which are contained in the Vaccine Injury Table, 42 C.F.R.
§100.3(a), and which Kaitlynn received on January 4, 2008, either singly or in combination with
one another, caused Kaitlynn to suffer a seizure and a seizure disorder and/or developmental

¹ Because this unpublished decision contains a reasoned explanation for the special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

delays, the effects of which have occurred for more than six months.

Respondent denies that Kaitlynn suffered from a seizure as a result of the vaccination(s); denies that the vaccination(s) caused her to develop a seizure disorder; and denies that the vaccination(s) caused her developmental delays and/or any other injury.

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. An amount sufficient to purchase the annuity contract described in paragraph 10 of the attached stipulation;**
- B. A lump sum payment of \$36,870.00, in the form of a check payable to petitioner and petitioner's attorney, Carol L. Gallagher, 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 \$2,131.00 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 08-702V 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

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Kaitlynn as a result of her alleged condition.

6. Respondent denies that Kaitlynn suffered from a seizure as the result of vaccination; denies that vaccination caused her to develop a seizure disorder; and denies that vaccination caused her developmental delays and/or any other injury.

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. 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");

b. A lump sum of **\$36,870.00** in the form of a check payable to petitioner and petitioner's attorney, Carol L. Gallagher, 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 of **\$2,131.00** in the form of a check payable to petitioner for out-of-pocket expenses incurred by petitioner in proceeding on the petition, as authorized pursuant to 42 U.S.C. § 300aa-15(e).

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 Kaitlynn, pursuant to which the Life Insurance Company will agree to make payments to Kaitlynn Valdez as follows:

- a. A certain lump sum of \$6,179.56 payable on March 1, 2025;
- b. A certain lump sum of \$8,094.66 payable on March 1, 2030; and
- c. A certain lump sum of \$10,433.16 payable on March 1, 2035.

Should Kaitlynn predecease the exhaustion of the payments referenced above in this paragraph or be declared incompetent by a court with proper jurisdiction, any remaining payments shall be made to Kaitlynn's estate. Either petitioner or Kaitlynn's legal guardian at the time shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of Kaitlynn's death or being declared incompetent.

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 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. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. sec. 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

13. 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.

14. 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 as part of the annuity contract will be used solely for the benefit of Kaitlynn 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 paragraph 8, petitioner, in her individual capacity and as legal representative of Kaitlynn, on behalf of herself, Kaitlynn, and her 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 Kaitlynn resulting from, or alleged to have resulted from, the Hep B and/or flu vaccinations administered on January 4, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about October 3, 2008, in the United States Court of Federal Claims as petition No. 08-702V.

16. If Kaitlynn 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.

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 voidable at the sole discretion of either party.

18. 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.

19. 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

Respectfully submitted,

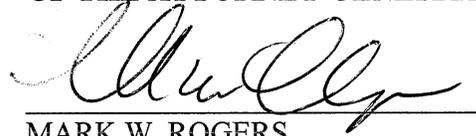
PETITIONER:


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Dated: August 2, 2010