

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 11-0522V
Filed: January 6, 2012**

TARA MURRAY KUNTZ, *
 *
 Petitioner, * Stipulation; Tdap; Brachial Neuritis;
 v. * Attorney Fees and Costs
 *
 SECRETARY OF HEALTH *
 AND HUMAN SERVICES, *
 *
 Respondent. *

DECISION ON JOINT STIPULATION¹

Vowell, Special Master:

Tara Murray Kuntz [“Petitioner”] filed a petition for compensation under the National Vaccine Injury Compensation Program² on August 17, 2011. Petitioner alleges that she developed brachial neuritis as a result of a tetanus-diphtheria-acellular pertussis [“Tdap”] immunization she received on May 15, 2010, and she further alleges that she experienced residual effects of this injury for more than six months. See Stipulation, filed January 6, 2012, at ¶¶ 2, 4. Respondent denies that petitioner’s brachial neuritis was caused-in-fact by her Tdap vaccination, and denies that petitioner’s current condition is a sequela of a vaccine-related injury. Stipulation at ¶ 6.

Nevertheless, the parties have agreed to settle the case. On January 6, 2012, the parties filed a joint stipulation agreeing to settle this case and describing the

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

settlement terms. Respondent agrees to pay petitioner a lump sum of \$37,500.00. **Accordingly, I hereby award the total of \$37,500.00³ in the form of a check payable to petitioner, Tara Murray Kuntz, and on the terms set forth in the attached stipulation.**

Additionally, the January 6, 2012 joint stipulation addressed attorney fees and costs. In lieu of filing a separate General Order #9 statement, the stipulation indicates petitioner incurred no personal litigation costs.

I find that this petition was brought in good faith and that there existed a reasonable basis for the claim. Therefore, an award for fees and costs is appropriate, pursuant to 42 U.S.C. §§ 300aa-15(b) and (e)(1). Further, the proposed amount seems reasonable and appropriate. **Accordingly, I hereby award the total \$5,103.11⁴ in the form of a check payable jointly to petitioner and petitioner's counsel of record, Kennedy Berkley Yarnevich & Williamson, for petitioner's attorney fees and costs.**

In the absence of a timely-filed motion for review filed pursuant to Appendix B of the Rules of the U.S. Court of Federal Claims, the clerk of the court shall enter judgment in accordance herewith.⁵

IT IS SO ORDERED.

s/ Denise K. Vowell
Denise K. Vowell
Special Master

³ This amount represents compensation for all damages that would be available under § 300aa-15(a).

⁴ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir.1991).

⁵ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. *See Vaccine Rule 11(a)*.

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

TARA MURRAY KUNTZ,)	
)	
Petitioner,)	
v.)	No. 11-522V
)	Special Master Denise K. Vowell
SECRETARY OF HEALTH AND)	ECF
HUMAN SERVICES)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. 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 petitioner's receipt of the tetanus-diphtheria-acellular pertussis ("Tdap") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received a Tdap immunization on May 15, 2010.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she contracted brachial neuritis as a result of her May 15, 2010, Tdap vaccination. Petitioner further alleges that she 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 as a result of her condition.
6. Respondent denies that petitioner's brachial neuritis was caused-in-fact by the Tdap

vaccine, and denies that her current condition is a sequela of a vaccine-related 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 compensation payments:

- a. A lump sum of \$37,500.00 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 \$5,103.11 in the form of a check jointly payable to petitioner and petitioner's law firm, Kennedy Berkley Yarnovich & Williamson, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In accordance with General Order # 9, petitioner represents that all litigation costs were paid by petitioner's attorney and that petitioner did not personally incur any costs in proceeding on the petition.

9. 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. § 300aa-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. § 1396 et seq.)), or by 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, litigation costs, and past unreimbursable expenses, 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. In return for the payments described in paragraph 8, petitioner, in her individual capacity and on behalf of 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.

§ 300aa-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 petitioner resulting from, or alleged to have resulted from, the Tdap vaccination administered on May 15, 2010, as alleged by petitioner in a petition for vaccine compensation filed on or about August 17, 2011, in the United States Court of Federal Claims as petition No. 11-522V.

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

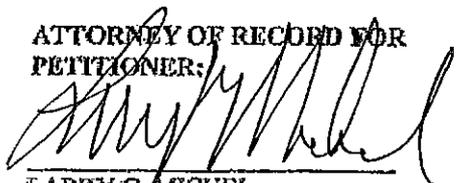
14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties'

Respectfully submitted,

PETITIONER:


TARA MURRAY KUNTZ

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Dated: January 6, 2012