

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

No. 07-296V

Filed: March 23, 2009

LUKE JAI JAI RAM, by and through his
parents and natural guardians, SHAHEMA
JAI JAI RAM AND BALMOUKOUND
JAI JAI RAM,

Petitioners,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

Influenza Vaccine, ADEM,
Encephalopathy, Stipulation

DECISION BASED ON JOINT STIPULATION

Vowell, Special Master:

Petitioners filed a timely petition ["Pet."] for compensation under the National Vaccine Injury Compensation Program¹ on May 10, 2007, on behalf of their son, Luke. Petitioners alleges that he sustained an encephalopathy or acute disseminated encephalomyelitis ["ADEM"], as well as significant behavioral and speech problems, as a result of an influenza vaccination he received on November 26, 2005. See Pet. at ¶ 2-4. Respondent denies that petitioner suffered the claimed injuries from the influenza vaccination or that his current medical condition is a sequelae of a vaccine-related injury. See Stipulation, filed March 20, 2009, at ¶ 6-7.

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

Nevertheless, the parties have agreed to settle the case. On March 20, 2009, the parties filed a [34] joint stipulation agreeing to settle this case and describing the settlement terms. Respondent agreed to pay petitioner:

A lump sum payment of **\$100,000.00** in the form of a check payable to petitioners. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

The special master adopts the parties' stipulation attached hereto, and awards compensation in the amount and on the terms set forth therein. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.²

IT IS SO ORDERED.

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

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

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OFFICE OF SPECIAL MASTERS

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MAR 20 2009

THE OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

LUKE JAI JAI RAM, by and through his parents
and natural guardians, SHAHEMA and
BALMOUKOUND JAI JAI RAM,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

No. 07-296V
Special Master Vowell

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. On behalf of their son, Luke Jai Jai Ram ("Luke"), petitioners filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to 300aa-34 (Vaccine Program). The petition seeks compensation for injuries allegedly related to Luke's receipt of an influenza vaccine, which vaccine is contained in the Vaccine Injury Table (Table), 42 C.F.R. § 100.3.

2. Luke received his influenza vaccination on November 26, 2005.

3. The vaccine was administered within the United States.

4. Petitioners allege that Luke developed an encephalopathy or acute disseminated encephalomyelitis ("ADEM"), as well as significant behavioral and speech problems, as a result of receiving the influenza vaccination on November 26, 2005.

5. Petitioners represent that there has been no prior award or settlement of a civil action

for damages as a result of Luke's condition.

6. Respondent's Rule 4 Report denies that Luke suffered an encephalopathy, ADEM, or behavioral and speech problems, as a result of his November 26, 2005 influenza vaccination.

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 petitioners have 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 payment of \$100,000.00 in the form of a check payable to petitioners. This amount represents compensation for all damages 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 petitioners have filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the Special Master shall preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 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 and costs and out-of-pocket expenses incurred by petitioners in proceeding on

the petition, the money provided pursuant to this Stipulation will be used solely for the benefit of Luke 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. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Luke's estate under the laws of Florida. No payment pursuant to this Stipulation shall be made to petitioners until petitioners provide the Secretary with documentation establishing their appointment as guardian/conservator of Luke's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Luke 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 Luke Jai Jai Ram upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioners, on behalf of themselves, and their heirs, executors, administrators, successors or assigns, do 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 or death of Luke resulting from, or alleged to have resulted from, the influenza vaccination administered on November 26, 2005, as alleged by petitioners in a petition for vaccine compensation filed on May 10, 2007, in the United States Court of Federal Claims as petition No. 07-296V.

14. In the event Luke should die prior to petitioners receiving the payment described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

15. In the event that the Special Master fails to issue a decision in complete conformity with the terms of this Stipulation or in the event 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.

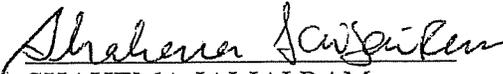
16. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

17. All rights and obligations of petitioners hereunder shall apply equally to petitioners' successors and assigns.

END OF STIPULATION

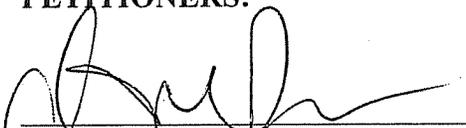
Respectfully submitted,

PETITIONERS:


SHAHEMA JAI JAI RAM

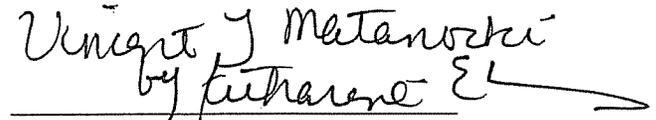
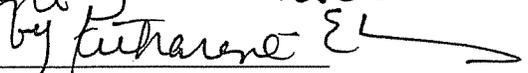

BALMOUKOUND JAI JAI RAM

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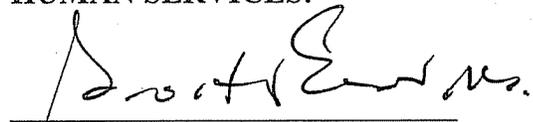
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Dated: 3/20/2009