

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-034V

Filed: August 23, 2013

NICOLE EARLES and WILLIAM PERRY,
as biological parents and personal
representatives of the estate of
KHALIL W. EARLES,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

*
*
*
*
*
*
*
*
*
*
*
*

NOT TO BE PUBLISHED

Special Master Zane

Stipulation; diphtheria-tetanus-acellular
pertussis (“DTaP”); inactivated
poliovirus (“IPV”); hepatitis B
 (“Hep B”); haemophilus influenza
 type B (“Hib”); pneumococcal
 conjugate, or rotavirus vaccines;
 encephalopathy; death

Elaine Whitfield Sharp, Whitfield, Sharp & Sharp, Marblehead, MA, for Petitioner
Althea Davis, United States Dep’t of Justice, Washington, DC, for Respondent

DECISION¹

On August 23, 2013, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioners alleged that their son’s death was a consequence of his receipt of the diphtheria-tetanus-acellular pertussis (“DTaP”), inactivated poliovirus (“IPV”), hepatitis B (“Hep B”),

¹ Because this decision contains a reasoned explanation for the special master’s action in this case, the special master intends to post it on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, § 205, 44 U.S.C. § 3501 (2006). The decisions of the special master will be made available to the public with the exception of those portions that contain trade secret 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. As provided by Vaccine Rule 18(b), each party has 14 days to file a motion requesting the redaction from this decision of any such alleged material. In the absence of a timely request, which includes a proposed redacted decision, the entire document will be made publicly available. If the special master, upon review of a timely filed motion to redact, agrees that the identified material fits within the categories listed above, the special master shall redact such material from the decision made available to the public. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

haemophilus influenza type B (“Hib”), pneumococcal conjugate, or rotavirus vaccines, which are vaccines contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a), and which Petitioners’ son received on or about January 15, 2008. Petitioners alleged that their son experienced the onset an encephalopathy on or about January 15, 2008, and that he died as a result thereof on January 16, 2008. Petitioners also represented that there have been no prior awards or settlement of a civil action for these damages. Petitioners now seek compensation related to their son’s death pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that the DTaP, IPV, Hep B, Hib, pneumococcal conjugate or rotavirus vaccines caused Petitioners’ son to suffer from an encephalopathy resulting in his death. Nonetheless, the parties have agreed informally to resolve this matter. Stipulation, Appendix A hereto.

The undersigned hereby ADOPTS the parties’ said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioner is awarded:

a lump sum of \$145,000.00, in the form of a check payable to petitioners as the legal representatives of the estate of Khalil Earles. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

The Court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/Daria J. Zane
Daria J. Zane
Special Master

² This document constitutes a final “decision” in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

NICOLE EARLES and WILLIAM PERRY)
as biological parents and personal)
representatives of the estate of)
KHALIL W. EARLES,)
)
Petitioners,)
)
v.)
)
SECRETARY OF HEALTH)
AND HUMAN SERVICES,)
)
Respondent.)

No. 10-34V
Special Master Daria Zane
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Nicole Earles filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"), on behalf of the estate of her minor son, Khalil W. Earles.¹ The petition seeks compensation for Khalil's injury and death allegedly related to his receipt of the diphtheria-tetanus-acellular pertussis ("DTaP"), inactivated poliovirus ("IPV"), hepatitis B, haemophilus influenzae type B ("Hib"), pneumococcal conjugate, or rotavirus vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Khalil received the DTaP, IPV, hepatitis B, Hib, pneumococcal conjugate and rotavirus vaccinations on January 15, 2008.
3. The vaccinations were administered within the United States.

¹ The Petition was amended on July 30, 2013, to add William Perry, Khalil's biological father, as a petitioner along with his mother, Nicole Earles. See Order dated July 30, 2013.

4. Petitioners allege that Khalil sustained the first symptom or manifestation of the onset of an encephalopathy on or about January 15, 2008, and that he died as a result thereof on January 16, 2008.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of the estate of Khalil W. Earles as a result of Khalil's alleged injury or death.

6. Respondent denies that the DTaP, IPV, hepatitis B, Hib, pneumococcal conjugate and rotavirus vaccinations received by Khalil caused any injury or death and denies that Khalil's death occurred as a result 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 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 of \$145,000.00 in the form of a check payable to petitioners, as the legal representatives of the estate of Khalil Earles. 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 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 parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. 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.

11. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as conservators of Khalil's estate under the laws of Washington, District of Columbia.

12. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacity and as legal representatives of the Estate of Khalil Earles, on behalf of Khalil's heirs, executors, administrators, successors, and assigns, do 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 United States 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 Khalil Earles resulting from, or alleged to have resulted from, the DTaP, IPV, hepatitis B, Hib, pneumococcal conjugate and rotavirus vaccinations administered on January 15, 2008, as alleged by petitioners in a petition for vaccine compensation filed on or about January 15, 2010, in the United States Court of Federal Claims as petition No. 10-34V.

13. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the United States 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.

14. 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 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.

15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the DTaP, IPV, hepatitis B, Hib, pneumococcal conjugate and rotavirus vaccinations received by Khalil Earles caused him to suffer any injury or death; or that Khalil's death occurred as the result of a vaccine-related injury.

16. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of the Estate of Khalil Earles.

END OF STIPULATION

/

/

/

/

/

/

/

/

/

/

/

/

/

/

Respectfully submitted,

Nicole
PETITIONERS:

Nicole Earles
NICOLE EARLES

William Perry
WILLIAM PERRY

ATTORNEY OF RECORD FOR
PETITIONERS:

Elaine Whitfield Sharp
ELAINE WHITFIELD SHARP, ESQUIRE
Whitfield Sharp & Sharp
196 Atlantic Avenue
Marblehead, MA 01945
(781) 639-1862

AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:

Vincent J. Matanoski
by *Anthony E.*
VINCENT J. MATANOSKI
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P. O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146

AUTHORIZED REPRESENTATIVE OF
THE SECRETARY OF HEALTH AND
HUMAN SERVICES:

Vito Caserta
VITO CASERTA, M.D.
Acting Director, Division of
Vaccine Injury Compensation (DVIC)
Director, Countermeasures Injury
Compensation Program (CICP)
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Stop 11C-26
Rockville, MD 20857

ATTORNEY OF RECORD FOR
RESPONDENT:

Althea Walker Davis
ALTHEA WALKER DAVIS
Senior Trial Counsel
Torts Branch, Civil Division
U. S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
(202) 616-0515

DATE: *23 August 2013*