

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-889V

Filed: November 19, 2012

KATY GARCIA and MICHAEL GARCIA, *
as parents and natural guardians of *
K.G., a minor, *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Diana Lynn Stadelnikas, Maglio Christopher and Toale, PA, Sarasota, FL, for Petitioner
Melonie J. McCall, United States Dep't of Justice, Washington, DC, for Respondent

NOT TO BE PUBLISHED

Special Master Zane

Stipulation; Trivalent influenza
("flu") vaccine; Guillain-Barre
Syndrome

UNPUBLISHED DECISION¹

On October 31, 2012, 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 daughter, K.G., suffered from Guillain-Barre Syndrome, as a consequence of her receipt of the trivalent influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a), and which she received on November 6, 2009. Petitioners allege that K.G. experienced the residual effects of this injury for more than six months. Petitioners also represent that there have been no prior awards or settlement of a civil action for these damages. Petitioners seek compensation related to K.G.'s injuries pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

¹ The undersigned intends to post this decision on the website of the United States Court of Federal Claims, 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)). 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 ruling will be available to the public. Id.

Respondent denies that the flu vaccine caused K.G.'s Guillain-Barre Syndrome or any other injury and denies that K.G.'s current disabilities are sequelae of her alleged vaccine-related injury. 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) **A lump sum of \$3,000.00 in the form of a check payable to Petitioners.**
This amount represents compensation for past unreimbursed expenses; and
- (b) An amount sufficient to purchase an annuity contract described in paragraph 10 of the attached Stipulation, paid to the life insurance company from which the annuity will be purchased, which will result in monthly payments of \$487.31 beginning February 3, 2028, payable for 8 years (guaranteed 96 payments) with the last guaranteed payment on January 3, 2036.

The above amounts represent 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 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

KATY GARCIA and MICHAEL GARCIA,)	
as parents and natural guardians of)	
K.G., a minor,)	
)	
Petitioners,)	No. 10-889V
v.)	Special Master Daria J. Zane
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their daughter, K.G., petitioners 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 K.G.’s receipt of the trivalent influenza (“Flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. K.G. received the Flu vaccine on November 6, 2009.¹
3. The vaccine was administered within the United States.
4. Petitioners allege that K.G. sustained the first symptom or manifestation of the onset of Guillain-Barre Syndrome (“GBS”) on or about November 23, 2009, and that she suffered the residual effects of this injury for more than six months.
5. Petitioners represent that there has been no prior award or settlement of a civil action

¹ K.G. also received a monovalent H1N1 vaccination on November 6, 2009. The vaccine, however, is not covered under the Vaccine Program. See 42 U.S.C. § 300aa-14 and 42 C.F.R. § 100.3(a).

for damages on behalf of K.G. as a result of her condition.

6. Respondent denies that the Flu vaccine or any other vaccine caused K.G.'s GBS or any other injury or 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 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 payments:

- a. A lump sum of \$3,000.00 in the form of a check payable to petitioners for past unremimbursed expenses; and,
- b. 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").

The above amounts represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

9. The Life Insurance Company must have a minimum of \$250,000,000.00 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 K.G., pursuant to which the Life Insurance Company will agree to make payments periodically to K.G. as follows:

Beginning February 3, 2028 (K.G.'s age 21), \$487.31 payable monthly for 8 years guaranteed (96 payments guaranteed), with the last guaranteed payment on January 3, 2036.

K.G. will continue to receive the annuity payments from the Life Insurance Company for the guarantee period. Should K.G. predecease the exhaustion of payments during the guarantee period described above, any remaining payments shall be made payable to the Estate of K.G. However, petitioners shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of K.G.'s death.

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 any amount awarded pursuant to paragraph 12 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. 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.

13. Petitioners and their 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.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs and past unreimbursable expenses, the money provided pursuant to this Stipulation either immediately or as part of the annuity contract, will be used solely for the benefit of K.G. 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).

16. In return for the payments described in paragraphs 8 and 12, petitioners, in their individual capacities and as legal representatives of K.G., on behalf of themselves, K.G., and her heirs, executors, administrators, successors or assigns,

(a) 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 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 K.G. resulting from, or alleged to have resulted from, the Flu vaccination administered on November 6, 2009, as alleged by petitioners in a petition for vaccine compensation filed on or about November 12, 2010, in the United States Court of Federal Claims as petition No. 10-889V; and

(b) waive any and all rights to any compensation that may be available under the Countermeasures Injury Compensation Program, 42 U.S.C. § 247d-6e (or an action under 42 U.S.C. § 247d-6d(d), for a claim alleging that a covered countermeasure, including the H1N1 influenza vaccination administered on November 6, 2009, on its own or in combination with the Flu vaccination administered on November 6, 2009, caused or significantly aggravated the same injuries that were the subject of the petition for vaccine compensation filed on November 12, 2010, in the United States Court of Federal Claims as petition No. 10-889V, specifically GBS, for which petitioners will receive compensation pursuant to this stipulation.

17. If K.G. 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.

18. 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.

19. 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 12 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. 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.

20. Petitioners hereby authorize respondent to disclose documents filed by petitioners 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.

21. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that K.G. suffered the onset of GBS or any other injury as the result of the Flu vaccine or any other vaccine, or that her current disabilities are sequelae of her alleged vaccine-related injury.

22. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and assigns as legal representatives of K.G.

END OF STIPULATION

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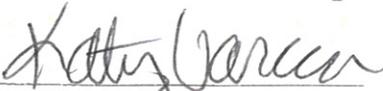
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Respectfully submitted.

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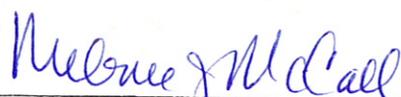
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