

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-119V

Filed: October 28, 2011

LAURI PETERSON and SCOTT PETERSON,)	
parents and natural guardians of)	
ROBERT S. PETERSON, a minor,)	
)	NOT TO BE PUBLISHED
Petitioners,)	
)	
v.)	
)	Stipulation; influenza (FluMist)
SECRETARY OF HEALTH)	left-side weakness; ataxia.
AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

Sheila A. Bjorklund, Lommen Abdo Law Firm, Minneapolis, MN, for Petitioners.
Lisa A. Watts, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

ZANE, Special Master.

On October 27, 2011, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioners, Laura and Scott Peterson, on behalf of their minor child, Robert S. Peterson ("Robert"), alleged that within hours of vaccination, Robert vomited and experienced the rapid onset of left-sided weakness and ataxia that were caused in fact by the receipt of the FluMist vaccine, which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Petitioners also alleged that Robert experienced the residual effects of his injury for more than six months. Petitioners seek compensation related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request the redaction "of any information furnished by that party (1) that is trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of a timely request, the entire document will be made publicly available.

Respondent denies that Robert's claimed injuries were caused by the FluMist vaccine, and denies that Robert's current disabilities are sequelae of his alleged injury. Nonetheless, the parties have agreed informally to resolve this matter.

The court 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, Petitioners are awarded:

- (1) **A lump sum of \$35,000.00, in the form of a check payable to Petitioners on behalf of Robert.** This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a), and
- (2) **A lump sum of \$30,736.79, in the form of a check payable to Petitioners and Petitioners' attorney, Sheila A. Bjorklund,** for attorneys' fees and costs available under 42 U.S.C. §300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by Petitioners in proceeding on the petition.

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 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.

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OFFICE OF SPECIAL MASTERS

LAURI PETERSON and SCOTT PETERSON,)	
parents and natural guardians of,)	<u>ECF</u>
ROBERT S. PETERSON, a minor)	No. 10-119V
)	
Petitioners,)	Special Master
)	Daria J. Zane
v.)	
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Lauri and Scott Peterson (“petitioners”), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the “Vaccine Program”), on behalf of their minor child, Robert S. Peterson (“Robert”). The petition seeks compensation for injuries allegedly related to Robert’s receipt of the influenza vaccine (FluMist), which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Robert received the FluMist vaccine on November 7, 2008.
3. The vaccine was administered within the United States.
4. Petitioners allege that within hours of vaccination, Robert vomited and experienced the rapid onset of left-sided weakness and ataxia that were caused-in-fact by receipt of the FluMist vaccine. Petitioners further allege that Robert suffered 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 for damages on Robert's behalf as a result of his condition.

6. Respondent denies that Robert's claimed injuries were caused by the FluMist vaccine, and denies that Robert's current disabilities are sequelae of his alleged 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 payments:

- a. A lump sum of \$35,000.00 in the form of a check payable to petitioners on behalf of Robert. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioners would be entitled on Robert's behalf; and
- b. A lump sum of \$30,736.79 in the form of a check payable to petitioners and petitioners' attorney, Sheila A. Bjorklund, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioners in proceeding on the petition.

9. 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.

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 and litigation costs, the money provided pursuant to this Stipulation will be used solely for Robert's benefit 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 have or will submit a written petition that comports with Rule 145 of the Minnesota General Rules of Practice for the District Courts. No payments pursuant to this Stipulation shall be made to petitioners until petitioners provide the Secretary with a copy of the order issued by a court of competent jurisdiction approving the disposition of funds on behalf of Robert S. Peterson.

13. In return for the payments described in paragraph 8, petitioners, in their individual capacities and as legal representatives of Robert, on behalf of themselves, Robert, and his heirs, executors, administrators, successors or 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 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 Robert S. Peterson resulting from, or alleged to have resulted from the FluMist vaccine administered to him on November 7, 2008, as alleged by petitioners in a petition

for vaccine compensation filed on or about February 23, 2010, in the United States Court of Federal Claims as petition No. 10-119V.

14. If Robert 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.

15. 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.

16. 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.

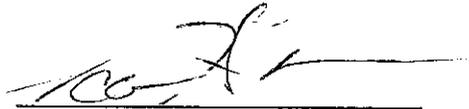
17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the FluMist vaccine caused Robert's injuries, or that his current disabilities are sequelae of his alleged vaccine injuries.

18. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of Robert S. Peterson.

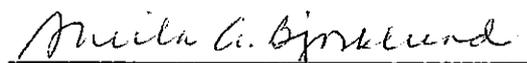
Respectfully submitted,

PETITIONERS:

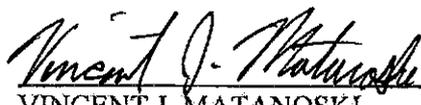

LAURI PETERSON


SCOTT PETERSON

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Dated: 10-27-2011