

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-523V

Filed: September 14, 2009

Not for publication

BARRY AND KATHIE HAGEWOOD
legal guardians of their minor child,
CHLOE JANE HAGEWOOD,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Damages decision based on
stipulation, varicella and
measles-mumps-rubella
vaccines, acute cerebellar ataxia

Curtis R. Webb, Twin Falls, ID, for petitioners.

Darryl R. Wishard, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On September 10, 2009, the parties filed the attached stipulation, in which they agreed to

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

settle this case and described the settlement terms. Petitioners alleged that their daughter, Chloe, suffered from acute cerebellar ataxia following varicella and measles-mumps-rubella vaccinations. Respondent denies that the vaccinee's acute cerebellar ataxia was caused in fact by her varicella and measles-mumps-rubella vaccinations. Nonetheless, the parties agreed to resolve this matter informally.

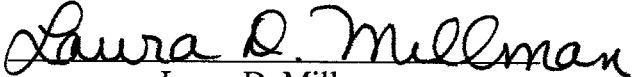
The court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. a lump sum of **\$100,000.00** in the form of a check, payable to petitioners as guardians and conservators of the estate of Chloe.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

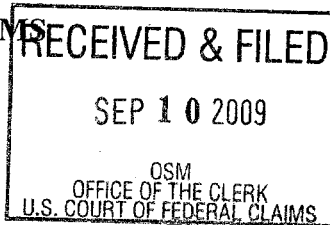
IT IS SO ORDERED.

Dated: Sept. 14, 2009


Laura D. Millman
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.

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



BARRY AND KATHIE HAGEWOOD,)
legal guardians of their minor child,)
CHLOE JANE HAGEWOOD,)
)
Petitioners,)
v.) No. 08-523V
) Special Master Millman
SECRETARY OF HEALTH AND HUMAN)
SERVICES,)
)
Respondent.)

STIPULATION

The parties hereby stipulate to the following matters:

1. On July 17, 2008, petitioners, on behalf of their daughter, Chloe Jane Hagewood (“Chloe”), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to Chloe’s receipt of the varicella and measles-mumps-rubella vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Chloe received the above-mentioned vaccines on July 27, 2005.
3. The vaccines were administered within the United States.
4. Petitioners allege that Chloe sustained the first symptom or manifestation of the onset on August 5, 2005, in the form of an episode of acute cerebellar ataxia, and that Chloe now suffers from hearing loss and speech/language delays that were caused-in-fact by her receipt of the vaccines.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Chloe as a result of her condition.

6. Respondent denies that Chloe's past and current medical conditions were caused-in-fact by receipt of the vaccines.

7. Maintaining their above-stated positions, the parties nevertheless agree 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 \$100,000.00, in the form of a check, payable to petitioners as guardians and conservators of the estate of Chloe. This lump sum 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. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and costs, the money provided pursuant to this Stipulation will be used solely

for the benefit of Chloe 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 guardians/conservators of Chloe's estate under the laws of their state of residence. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Chloe's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of Chloe's estate 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 guardians/conservators of Chloe's estate upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities and as legal representatives of Chloe, on behalf of themselves, Chloe, her heirs, executors, administrators, successors or assigns, do forever fully and 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 Chloe resulting from, or alleged to have resulted from, the vaccines administered on July 27, 2005, as alleged by petitioners in a petition for vaccine compensation filed on or about July 17, 2008, in the United States Court of Federal Claims as petition No. 08-523V.

14. If Chloe should die prior to 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. 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 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. 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 as legal representatives of Chloe.

END OF STIPULATION

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Respectfully submitted,

PETITIONERS:

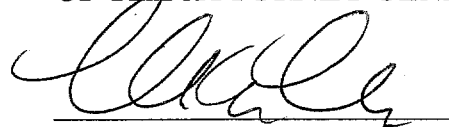

BARRY HAGEWOOD


KATHIE HAGEWOOD


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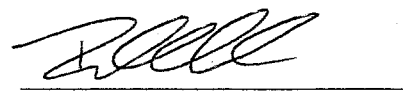
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Dated: 9/10/09

CERTIFICATE OF SERVICE

I certify that on this 10th day of September, 2009, the original of the foregoing was filed in the U.S. Court of Federal Claims via personal service, and that a true and correct copy was served via first-class mail, postage pre-paid, upon:

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