

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

RONALD CYRULNIK,	*	
	*	
Petitioner,	*	No. 07-442V
	*	Special Master Christian J. Moran
v.	*	
	*	
SECRETARY OF HEALTH	*	Filed: November 20, 2008
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	Stipulation; influenza vaccine;
	*	Guillain-Barré syndrome (GBS) or
	*	chronic inflammatory demyelinating
	*	polyneuropathy (CIDP)

UNPUBLISHED DECISION¹

Ronald C. Homer, Esq., Conway, Homer & Chin-Caplan, P.C., Boston, M.A., for Petitioner;
Traci R. Patton, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On November 14, 2008, the parties filed a joint stipulation concerning the petition for compensation filed by Ronald Cyrulnik on June 28, 2007. In his petition, Mr. Cyrulnik alleged that the influenza vaccination which is contained in the Vaccine Injury Table, 42 C.F.R. §100.3 (a)(XIV), and which Mr. Cyrulnik received on October 22, 2003, caused him to suffer Guillain-Barré syndrome. Mr. Cyrulnik's petition alleges that approximately six months after his initial problems, he suffered a relapse and was hospitalized. During his recovery, Mr. Cyrulnik underwent five operations. He currently uses a wheelchair.

Respondent denied that Mr. Cyrulnik suffers from Guillain-Barré syndrome and contended, instead, that Mr. Cyrulnik suffers from chronic inflammatory demyelinating

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document's disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

polyneuropathy. Further, regardless of the name given to Mr. Cyrulnik, respondent denied that Mr. Cyrulnik's October 22, 2003 influenza vaccination caused him any adverse reaction.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. **A lump sum payment of \$888,909.19 in the form of a check payable to the petitioner.** This amount represents compensation for first year post judgment life care expenses (\$142,637.02), lost earnings (\$359,472.00), pain and suffering (\$243,858.73), past unreimbursable expenses (\$142,941.44), and
- B. An amount sufficient to purchase the annuity contract described in paragraph 10 of the stipulation attached as Appendix A, paid to the life insurance from which the annuity will be purchased. The amount described herein represents compensation for all remaining elements of compensation.

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 07-442V according to this decision and the attached stipulation.

Any questions may be directed to Francina Segbefia at (202) 357-6358.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

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 petitioner has 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 \$888,909.19, which amount represents compensation for first year post judgment life care expenses (\$142,637.02), lost earnings (\$359,472.00), pain and suffering (\$243,858.73), and past unreimbursable expenses (\$142,941.44) in the form of a check payable to petitioner; 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 amount described herein represents compensation for all remaining elements of compensation.

9. The Life Insurance Company must have a minimum of \$250,000,000 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 Ronald Cyrulnik, pursuant to which the Life

Insurance Company will agree to make payments periodically to petitioner for the following items of compensation:

- a. For future un-reimbursable adaptive technology specialist expenses, on the anniversary of the date of judgment in 2010, a lump sum payment of \$500.00. Then, on the anniversary of the date of judgment in 2012, a lump sum payment of \$500.00. Then, on the anniversary of the date of judgment in 2014, a lump sum payment of \$500.00. Then, on the anniversary of the date of judgment in 2016, a lump sum payment of \$500.00. Then, on the anniversary of the date of judgment in 2018, a lump sum payment of \$500.00. Then, on the anniversary of the date of judgment in 2020, a lump sum payment of \$500.00. Then, on the anniversary of the date of judgment in 2022, a lump sum payment of \$500.00. Then, on the anniversary of the date of judgment in 2024, a lump sum payment of \$500.00. Then, on the anniversary of the date of judgment in 2026, a lump sum payment of \$500.00. Thereafter, beginning on the anniversary of the date of judgment in 2027, an annual amount of \$250.00 to be paid for the remainder of Ronald Cyrulnik's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- b. For future un-reimbursable case management expenses; beginning on the first anniversary of the date of judgment, an annual amount of \$3,600.00 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- c. For future un-reimbursable adaptive equipment expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$200.00 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- d. For future un-reimbursable disposable supply expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$600.00 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- e. For future un-reimbursable shower commode chair expenses, on the anniversary of the date of judgment in 2014, a lump sum payment of \$1,590.00. Then, on the anniversary of the date of judgment in 2020, a lump sum payment of \$1,590.00, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- f. For future un-reimbursable manual wheelchair maintenance expenses, beginning on the anniversary of the date of judgment in 2010, an annual amount of \$200.00 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

- g. For future un-reimbursable power wheelchair w/battery expenses, on the first anniversary of the date of judgment, a lump sum payment of \$1,500.00, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- h. For future un-reimbursable power wheelchair battery replacement expenses, beginning on the anniversary of the date of judgment in 2011, an annual amount of \$325.00 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- i. For future un-reimbursable power wheelchair maintenance expenses, beginning on the anniversary of the date of judgment in 2010, an annual amount of \$500.00 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- j. For future un-reimbursable power wheelchair tire and bearing expenses, on the anniversary of the date of judgment in 2015, a lump sum payment of \$1,200.00. Then, on the anniversary of the date of judgment in 2020, a lump sum payment of \$1,200.00, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- k. For future un-reimbursable wheelchair Aspen seat expenses, on the first anniversary of the date of judgment, a lump sum payment of \$875.00. Then, on the anniversary of the date of judgment in 2016, a lump sum payment of \$875.00, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- l. For future un-reimbursable power wheelchair carryall expenses, on the first anniversary of the date of judgment, a lump sum payment of \$77.90. Then, on the anniversary of the date of judgment in 2016, a lump sum payment of \$77.90, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- m. For future un-reimbursable gasoline allowance expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$2,000.00 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- n. For future un-reimbursable van maintenance expenses, beginning on the anniversary of the date of judgment in 2012, an annual amount of \$500.00 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- o. For future un-reimbursable Certified Nursing Assistant (CNA) expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$71,175.00 to be paid

for the remainder of Ronald Cyrulnik's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

p. For future un-reimbursable PERSCARE insurance premium expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$4,855.22 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.

q. For future un-reimbursable health insurance co-pay allowance expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$1,000.00 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.

r. For future un-reimbursable PERSCARE deductible expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$3,000.00 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.

s. For future un-reimbursable Medicare Part B expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$1,156.80 to be paid for the remainder of Ronald Cyrulnik's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment. Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as he, Ronald Cyrulnik, is alive at the time that a particular payment is due. Petitioner's estate shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Ronald Cyrulnik'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 the amounts 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 petitioner has 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.

13. Payments made pursuant to paragraph 8 and any amount 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.

14. The parties and their attorneys further agree and stipulate that the money provided pursuant to this Stipulation either immediately or as part of the annuity contract will be used solely for the benefit of petitioner, Ronald Cyrulnik, 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).

15. In return for the payments described in paragraphs 8 and 12, petitioner, in his individual capacity, and on behalf of his heirs, executors, administrators, successors or assigns, does 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 himself resulting from, or alleged to have resulted from, the Flu vaccination administered to him on October 22, 2003, as alleged by petitioner in a petition for vaccine compensation filed on June 28, 2007, in the United States Court of Federal Claims as petition No. 07-442V.

16. If petitioner should die prior to receiving any or all of the payments 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.

17. 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.

18. 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 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.

19. All rights and obligations of petitioner hereunder shall apply equally to his successors and assigns.

END OF STIPULATION

Respectfully submitted,

PETITIONER:

Ronald Cyrulnik
RONALD CYRULNIK

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