

Respondent denies that the petitioners have established by a preponderance of the evidence that Maxwell suffered a vaccine-related injury.

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 lump sum payment of \$80,000.00 in the form of a check payable to the petitioners as the guardians/conservators of Maxwell's estate. This amount represents compensation for all damages that would be available pursuant to 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 07-853V 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

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

_____)	
MICHAELA and CRAIG MORGAN,)	
Legal Representatives of a Minor Child,)	
MAXWELL MORGAN,)	
)	
Petitioners,)	
)	No. 07-853V
v.)	Special Master Moran
)	ECF
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, Maxwell Morgan (“Maxwell”), petitioners, Michaela and Craig Morgan, 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”). The petition seeks compensation for injuries allegedly related to Maxwell’s receipt of his second varicella vaccination, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 U.S.C. § 300aa-14(a); 42 C.F.R. § 100.3(a).
2. Maxwell received his second varicella immunization on April 27, 2007.
3. The vaccine was administered within the United States.
4. Petitioners allege that Maxwell “suffered a bilateral immunization-induced optic neuropathy causing him rapidly progressive visual loss in both eyes” as a result of receiving the above vaccination.

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

6. Respondent denies that petitioners have established by a preponderance of evidence that Maxwell suffered 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), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of Eighty Thousand Dollars (\$80,000.00) in the form of a check payable to petitioners as the guardians/conservators of Maxwell's estate. 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), 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. Payment 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 that the money provided pursuant to this Stipulation will be used solely for the benefit of Maxwell 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 ninety days of the date of judgment will become, duly authorized to serve as guardians/conservators of Maxwell's estate under the laws of the State of California. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Maxwell's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Maxwell Morgan at the time a payment pursuant to the 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 the estate of Maxwell Morgan upon submission of written documentation of such appointment to the Secretary.

13. In return for the payment described in paragraph 8, and any payment awarded pursuant to paragraph 9, petitioners, in their individual capacities as the legal representatives of Maxwell, on behalf of themselves, Maxwell, and his heirs, executors, administrators, successors, and assigns, do 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 Maxwell resulting from, or alleged to have resulted from, the

varicella immunization administered on April 27, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about December 4, 2007, in the United States Court of Federal Claims as petition No. 07-853V.

14. If Maxwell should die prior to petitioners 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.

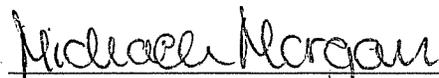
16. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

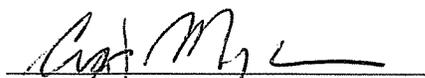
17. All rights and obligations of petitioners hereunder shall apply equally to their successors and/or assigns as legal representatives of Maxwell Morgan.

END OF STIPULATION

Respectfully submitted,

PETITIONERS:

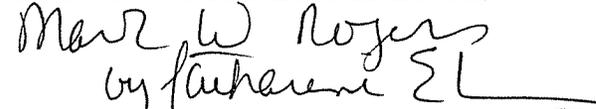

MICHAELA MORGAN


CRAIG MORGAN

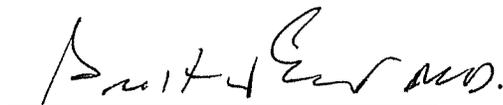
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DATE: April 7, 2009