

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

GLEND A KENNEDY, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND HUMAN SERVICES, *

Respondent. *

No. 07-410V
Special Master Christian J. Moran

Filed: February 10, 2009

Stipulation, trivalent influenza,
Guillain-Barre syndrome, chronic
inflammatory demyelinating
polyneuropathy.

UNPUBLISHED DECISION¹

Albert Joseph Brooks, Jr., Esq., Philadelphia, PA, for Petitioner;
Melonie J. McCall, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On February 6, 2009, the parties filed a joint stipulation concerning the petition for compensation filed by Glenda Kennedy on June 22, 2007. In her petition, Ms. Kennedy alleged that the trivalent influenza vaccine, which is contained in the Vaccine Injury Table, 42 C.F.R. §100.3 (a), and which Ms. Kennedy received on October 26, 2005, caused her to sustain the first symptom or manifestation of the onset of Guillain-Barre syndrome (GBS) and chronic inflammatory demyelinating polyneuropathy (CIDP) in mid December 2005. Ms. Kennedy also alleges that she continues to suffer from numbness in her feet and weakness in her arms, tremors,

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

CIDP, hand pain, GBS, depression, and diabetes, which she developed secondary to her use of glucocorticoids, which were necessitated by the treatment of GBS.

Respondent denies that Ms. Kennedy's alleged injury fulfills the criteria of the injury table in the statute, and denies that the injury identified in the petition is casually related to the administration of the vaccine.

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 \$187,500.00 in the form of a check payable to the petitioner. 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 07-410V according to this decision and the attached stipulation.

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

IT IS SO ORDERED.

Christian J. Moran
Special Master

5. Petitioner represents that she has not received compensation in the form of an award or settlement for her vaccine related injuries.

6. Respondent denies that petitioner's alleged injury fulfills the criteria of the injury table in the statute, and denies that the injury identified in the petition is causally related to the administration of the vaccine.

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 payment:

A lump sum of \$187,500.00 in the form of a check payable to petitioner. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

9. 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 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 litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner 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. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever expressly and fully 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 petitioner resulting from, or alleged to have resulted from, the trivalent influenza vaccination administered to her on or about October 26, 2005, as alleged by petitioner in a petition for vaccine compensation filed on June 22, 2007, in the United States Court of Federal Claims as petition No. 07-410V.

13. If petitioner 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.

14. 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.

15. 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

Respectfully submitted,

PETITIONER:



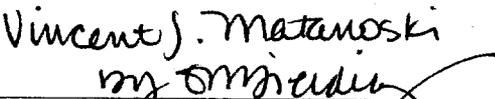
GLENDA KENNEDY

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Dated: 2/5/09