

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-0061V

Filed: 22 December 2008

* * * * *
ANDREA HUGHIE, as Personal *
Representative of MICAIAH HUGHIE, *
Deceased, *
*
Petitioner, *
*
v. *
*
SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
*
Respondent. *
* * * * *

Gene McCain Connell, Jr., Esq., Kelaher, Bass & Connell, Surfside Beach, SC, for Petitioner;
Lisa Ann Watts, Esq., United States Department of Justice, Washington, D.C. for Respondent.

UNPUBLISHED DECISION¹

ABELL, Special Master.

On 8 December 2008, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Micaiah Hughie, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

1. On 28 January 2008, Andrea Hughie (Petitioner) filed this Petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 through -34, as amended (the "Vaccine Program"). The Petition seeks compensation for injuries and resulting death allegedly related to Micaiah's receipt of the following vaccines: diphtheria-tetanus-acellular pertussis (DTaP), inactivated poliovirus (IPV), Hepatitis B (Hep B), pneumococcal conjugate (PCV7), and haemophilus influenza type b (HIB), which [vaccines are included] on the

¹ Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

Vaccine Injury Table (the “Table”). 42 C.F.R. § 300aa-14(a)(I, II, IV); 42 C.F.R. § 100.3(a)(I, II, VII-IX, XIII).

2. Micaiah received the DTaP, IPV, HIB, Hep B, and PCV7 vaccines on 14 February 2006.

3. The vaccines were administered within the United States.

4. Less than 24 hours after vaccination, on 15 February 2006, Micaiah was found unresponsive and lying face down in his bassinet. Aggressive attempts at resuscitation by emergency personnel were to no avail, and Micaiah was pronounced dead at 4:58 a.m. The official cause of death was listed as Sudden Infant Death Syndrome.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Micaiah or his estate as a result of the alleged injury or death.

6. Respondent denies that the DTaP, IPV, HIB, Hep B and PCV7 vaccines caused injury to Micaiah, and additionally denies that a vaccine-related injury was a direct or proximate cause of Micaiah’s death.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that [this Decision] should be entered [by the Undersigned] awarding the compensation described in paragraph 8 of this [Decision].

8. As soon as practicable after an entry of judgment reflecting [this Decision], and after Petitioner files an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services [shall] issue the following vaccine compensation payments:

a. A lump sum of **\$125,000.00** in the form of a check **payable to Petitioner** as the personal representative of Micaiah’s estate, which amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which Petitioner would be entitled.

b. A lump sum of **\$29,651.11** in the form of a check **payable to Petitioner and Petitioner’s attorney, Gene M. Connell, Jr. Esq.**, for attorneys’ fees and costs, and, in compliance with General Order #9, [Petitioner represents that] no out-of-pocket expenses were incurred by Petitioner herself in proceeding upon this Petition.

9. Payments made pursuant to paragraph 8 of this [Decision] [shall] be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

10. In return for the payments described in paragraphs 8, Petitioner, in her individual capacity and as the personal representative of the estate of Micaiah Hughie, and on behalf of herself and Micaiah’s estate, 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 Micaiah, resulting from, or alleged to have resulted from, the DTaP, IPV, HIB, Hep B, and PCV7 vaccines administered to Micaiah on 14 February 2006, as alleged by Petitioner in the Petition for vaccine compensation filed in the United States Court of Federal Claims on 28 January 2008 as Case No. 08-0061V.

11. [If the undersigned Special Master does not issue a Decision in complete conformity with the terms of the Stipulation between the parties, or in the event the Court of Federal Claims does not enter judgment in conformity with a decision that is in complete conformity with the terms of the Stipulation between the parties,] then the parties' settlement and their Stipulation shall be null and void at the discretion of either party.

12. This [Decision] 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.

13. All rights and obligations of Petitioner hereunder shall apply equally to her successors and assigns as personal representatives of the estate of Micaiah Hughie.

I find this conclusion reasonable, just and proper, and adopt these provisions as the Decision of this Court in awarding damages. Therefore, in the absence of the filing of a motion for review, filed pursuant to Vaccine Rule 23 within 30 days of this date, **the clerk shall forthwith enter judgment** in accordance herewith.

IT IS SO ORDERED.

Richard B. Abell
Special Master