

OFFICE OF SPECIAL MASTERS

No. 07-241V

Filed: February 27, 2009

JOHN MEYER, as parent and natural)	
guardian of RENEE MEYER, a minor)	
child,)	
)	
Petitioner,)	
)	
v.)	Stipulation;
)	diphtheria-tetanus-acellular
)	pertussis vaccine
SECRETARY OF THE DEPARTMENT)	
OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

DECISION¹

On April 17, 2007, petitioner, John Meyer, filed a petition on behalf of his minor daughter Renee, seeking compensation under the National Vaccine Injury Compensation Program (the “Vaccine Program” or the “Act”).² The petition seeks compensation for injuries related to Renee’s receipt, on April 20, 2004, of a diphtheria-tetanus-acellular pertussis (DTaP) vaccine which is contained in the Vaccine Injury Table. See 42 U.S.C § 300aa-14(a)(I); 42 C.F.R. § 100.3(a)(I).

On February 18, 2009, counsel for both parties filed a stipulation, stating that a

¹ Vaccine Rule 18(b) states that all of the decisions of the special masters will be made available to the public unless the decisions contain trade secrets or commercial or financial information that is privileged or confidential, or the decisions contain medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. Within 14 days of the filing of a decision or substantive order with the Clerk of the Court, a party may identify and move for the redaction of privileged or confidential information before the document’s public disclosure.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

decision should be entered awarding compensation. The parties stipulated that petitioner shall receive the following compensation:

A lump sum of \$ 70,000.00 in the form of a check payable to petitioner, as guardian /conservator of the estate of Renee Meyer. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

Stipulation ¶ 8.

The undersigned approves the requested amount for petitioner's compensation. Accordingly, an award should be made in the form of a check payable to petitioner in the amount of \$70,000.00. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

Patricia E. Campbell-Smith
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

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

RECORDED & FILED
FEB 18 2009
CSM
OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

JOHN MEYER, as Parent and Natural Guardian)
of RENEE MEYER, a Minor,)
)
Petitioner,)
)
v.)
)
SECRETARY OF HEALTH AND SERVICES,)
)
Respondent.)

No. 07-241V
Special Master Campbell-Smith

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of his daughter, Renee Myer (“Renee”), petitioner John Meyer (“petitioner”) as Parent and Natural Guardian, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to Renee’s receipt of a diphtheria-tetanus-acellular pertussis (“DTaP”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”) at 42 U.S.C. § 300aa-14(a)(I); 42 C.F.R. § 100.3(a)(I).
2. Renee received her DTaP vaccination on or about April 20, 2004.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Renee sustained vaccine-related injuries including hypotonia, dysphagia, and acute demyelinating encephalomyelopathy (“ADEM”), which were caused-in-fact by the vaccination. Petitioner further alleges that the sequelae of those injuries persisted for over six months.
5. Petitioner represents that there has been no prior award or settlement of a civil

action for damages on Renee's behalf as a result of her condition.

6. Respondent denies that Renee suffered from ADEM and other associated injuries, denies that her injuries were vaccine-related, and denies that her current disabilities are sequelae of her alleged vaccine-related injuries.

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 payment of \$70,000.00 in the form of a check payable to petitioner, as guardian/conservator of the estate of Renee Meyer. 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 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.

10. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 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 Renee 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. Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Renee's estate under the laws of the State of Colorado. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as guardian/conservator of Renee's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Renee 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 guardian/conservator of the estate of Renee upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity and as legal representative of Renee, on behalf of himself, Renee, and her 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, Renee resulting from, or alleged to have resulted from, the DTaP vaccination administered on or about

April 20, 2004, as alleged by petitioner in a petition for vaccine compensation filed on or about April 17, 2007, in the United States Court of Federal Claims as petition No. 07-241V.

14. If Renee 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 in the event 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.

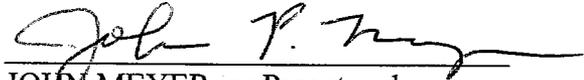
16. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

17. All rights and obligations of petitioner hereunder shall apply equally to his successors and assigns as legal representatives of Renee.

END OF STIPULATION

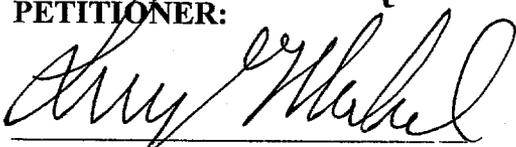
Respectfully submitted,

PETITIONER:



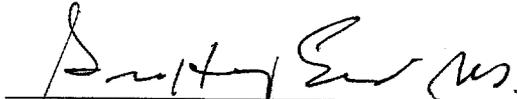
JOHN MEYER, as Parent and
Natural Guardian of RENEE MEYER

**ATTORNEY OF RECORD FOR
PETITIONER:**



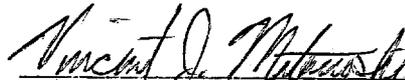
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Dated: 2/18/09