

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: February 21, 2007)

DO NOT PUBLISH

_____	)	
MICHELLE SHAFFER,	)	
mother and natural guardian of her daughter,	)	
NICOLE SHAFFER,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 03-0349V
	)	Stipulation
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
_____	)	

**DECISION DIRECTING ENTRY OF JUDGMENT<sup>1</sup>**

On February 20, 2007, the parties filed a stipulation. The special master has reviewed thoroughly the stipulation. He adopts completely the stipulation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the stipulation in petitioner’s favor. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), petitioner may expedite payment by filing an election to accept the judgment.

s/John F. Edwards  
John F. Edwards  
Special Master

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<sup>1</sup> As provided by Vaccine Rule 18(b), each party has 14 days 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” will be available to the public. *Id.*

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

NICOLE SHAFFER, a Minor, by Her	)	
Mother and Natural Guardian,	)	
MICHELLE SHAFFER,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 03-349V
	)	Special Master
SECRETARY OF HEALTH AND	)	JOHN EDWARDS
HUMAN SERVICES,	)	
	)	
Respondent.	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her daughter, Nicole Shaffer, ("Nicole"), petitioner filed a petition for vaccine injury compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (the "Vaccine Program"). The petition seeks compensation for injuries related to Nicole's receipt of the Measles-Mumps-Rubella ("MMR"), hemophilus influenzae type b ("Hib"), and Prevnar vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a)(II).
2. Nicole received her MMR, Hib #4 and Prevnar immunizations on June 25, 2001, when she was fifteen months old.
3. The vaccines were administered within the United States.
4. Nicole sustained the first symptom or manifestation of the onset of an encephalopathy within the time period set forth

in the Table for MMR vaccine. Moreover, she developed cerebellar ataxia and atrophy as sequelae of her Table injury.

5. Nicole suffered the residual effects or complications of her encephalopathy for more than six months after her vaccination.

6. There is not a preponderance of the evidence demonstrating that Nicole's condition is due to a factor unrelated to her June 25, 2001 MMR immunization.

7. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Nicole as a result of her condition.

8. Accordingly, Nicole is entitled to compensation under the terms of the Vaccine Program. Therefore, a decision should be entered awarding the compensation described in paragraph 9 of this Stipulation.

9. 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 \$946,497.95, in the form of a check payable to petitioner, as guardian/conservator of Nicole's estate, or any successor guardian or conservator. This amount represents compensation for first year, post-judgment, vaccine-related expenses (\$210,737.95), pain and suffering (\$195,450.00, which amount is not in excess of any applicable statutory maximums), and lost earnings (\$540,310.00); and,

b. a lump sum of \$11,617.38, in the form of a check payable jointly to petitioner and

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Bureau of Financial Operations, TPL Section  
Bldg 43, Room 316  
Harrisburg Hospital Grounds  
2101 N. Camerson Street  
Harrisburg, PA 17110  
Attn: Ms. Carol Zellers; and

c. a lump sum payment of \$18,707.74, in the form of a check payable to petitioner, Michelle Shaffer, for past unreimbursed expenses; and

d. an amount sufficient to purchase the annuity contract described in paragraph 11 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

10. 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.

11. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of Nicole, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner

or her successor guardian or conservator until Nicole reaches the age of majority, and thereafter directly to Nicole herself, for the following items of compensation:

a. For future unreimbursable insurance expenses, beginning on the anniversary of the date of judgment in the year 2021, an annual amount of \$3,252.00, to be paid up to the anniversary of the date of judgment in the year 2023; then beginning on the anniversary of the date of judgment in the year 2023, an annual amount of \$2,381.40, to be paid up to the anniversary of the date of judgment in the year 2030, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment;

b. For future unreimbursable Medicare premiums and deductibles and Supplemental Medicare insurance premium expenses, beginning on the anniversary of the date of judgment in the year 2030, an annual amount of \$2,327.60, to be paid for the remainder of Nicole's life, this amount increasing at the rate of four percent (4%), compounded annually from the date of judgment;

c. For future unreimbursable physiatry and neurology expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$143.00, to be paid up to the anniversary of the date of judgment in the year 2021, then beginning on the anniversary of the date of judgment in year 2021, an annual amount of \$35.00 to be paid up to the anniversary of the date of judgment in the year 2030, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment;

d. For future unreimbursable tutoring expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$21,600.00 to be paid up to the anniversary of the date of judgment in the year 2019, this amount increasing at the rate of four percent (4%), compounded annually from the date of judgment;

e. For future unreimbursable speech/language therapy, physical therapy and occupational therapy expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$32,503.00, to be paid up to the anniversary of the date of judgment in the year 2009, then beginning on the anniversary of the date of judgment in year 2009, an annual amount of \$14,287.00 to be paid up to the anniversary of the date of judgment in the year

2015, then beginning on the anniversary of the date of judgment in year 2015, an annual amount of \$5,179.00 to be paid up to the anniversary of the date of judgment in the year 2019, then beginning on the anniversary of the date of judgment in year 2019, an annual amount of \$450.00 to be paid up to the anniversary of the date of judgment in the year 2023, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment;

f. For future unreimbursable FM System expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$360.00 to be paid for the remainder of Nicole's life, this amount increasing at the rate of four percent (4%), compounded annually from the date of judgment;

g. For future unreimbursable Earobics (auditory processing technology) expenses, beginning on the anniversary of the date of judgment in the year 2025, an annual amount of \$59.00 to be paid for one year only; then on the anniversary of the date of judgment in the year 2050, an annual amount of \$59.00 to be paid for one year only, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment;

h. For future unreimbursable educational software, notebook computer, digital recorder, Trackball/Keyboard and Paperport Deluxe expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$458.71, to be paid for the remainder of Nicole's life, this amount increasing at the rate of four percent (4%), compounded annually from the date of judgment;

i. For future unreimbursable rifton chair expenses, beginning on the anniversary of the date of judgment in the year 2012, an annual amount of \$2,054.00 to be paid for one year only, this amount increasing at the rate of four percent (4%), compounded annually from the date of judgment;

j. For future unreimbursable neurodevelopmental evaluation expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$450.00 to be paid for one year only; then beginning on the anniversary of the date of judgment in year 2010, an annual amount of \$450.00 to be paid for one year only; then beginning on the anniversary of the date of judgment in year 2012, an annual amount of \$450.00 to be paid for one year only; then beginning on the anniversary of the date of judgment

in year 2015, an annual amount of \$450.00 to be paid for one year only; then beginning on the anniversary of the date of judgment in year 2018, an annual amount of \$450.00 to be paid for one year only; then beginning on the anniversary of the date of judgment in year 2021, an annual amount of \$450.00 to be paid for one year only, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment;

k. For future unreimbursable counseling expenses, beginning on the anniversary of the date of judgment in the year 2008, an annual amount of \$1,860.00 to be paid for one year only; then beginning on the anniversary of the date of judgment in year 2013, an annual amount of \$1,860.00 to be paid for one year only; then beginning on the anniversary of the date of judgment in year 2018, an annual amount of \$1,860.00 to be paid for one year only; then beginning on the anniversary of the date of judgment in year 2020, an annual amount of \$1,860.00 to be paid for one year only; then beginning on the anniversary of the date of judgment in the year 2022, an annual amount of \$2,580.00 to be paid up to the anniversary of the date of judgment in the year 2024; then beginning on the anniversary of the date of judgment in the year 2031, an annual amount of \$360.00 to be paid up to the anniversary of the date of judgment in the year 2033; then beginning on the anniversary of the date of judgment in the year 2040, an annual amount of \$360.00 to be paid up to the anniversary of the date of judgment in the year 2042; then beginning on the anniversary of the date of judgment in the year 2050, an annual amount of \$360.00 to be paid up to the anniversary of the date of judgment in the year 2052; then beginning on the anniversary of the date of judgment in the year 2060, an annual amount of \$360.00 to be paid up to the anniversary of the date of judgment in the year 2062; then beginning on the anniversary of the date of judgment in year 2065, an annual amount of \$360.00 to be paid for one year only, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment;

l. For future unreimbursable respite care expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$16,416.00 to be paid up to the anniversary of the date of judgment in year 2019, this amount increasing at the rate of four percent (4%), compounded annually from the date of judgment;

m. For future unreimbursable hippo therapy and summer programming activities expenses, beginning on the first

anniversary of the date of judgment, an annual amount of \$2,918.00 to be paid up to the anniversary of the date of judgment in the year 2019; then beginning on the anniversary of the date of judgment in the year 2019, an annual amount of \$638.00 to be paid up to the anniversary of the date of judgment in the year 2022, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment;

n. For future unreimbursable home and community support and therapy session support expenses, beginning on the anniversary of the date of judgment in the year 2019, an annual amount of \$33,329.60 to be paid up to the anniversary of the date of judgment in year 2030, this amount increasing at the rate of four percent (4%), compounded annually from the date of judgment;

o. For future unreimbursable home health aide and in-home services expenses, beginning on the anniversary of the date of judgment in the year 2030, an annual amount of \$23,088.00 to be paid up to the anniversary of the date of judgment in year 2060; then beginning on the anniversary of the date of judgment in the year 2060, an annual amount of \$36,941.00 to be paid for the remainder of Nicole's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment;

p. For future unreimbursable gait walkable, treadmill and accessories expenses, beginning on the anniversary of the date of judgment in the year 2012, an annual amount of \$7,225.00 to be paid for one year only, this amount increasing at the rate of four percent (4%), compounded annually from the date of judgment;

q. For future unreimbursable scooter expenses, beginning on the anniversary of the date of judgment in the year 2010, a lump sum amount of \$2,271.00; then beginning on the anniversary of the date of judgment in the year 2011, an annual amount of \$454.20 to be paid for the remainder of Nicole's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment;

r. For future unreimbursable swivel chair, scooter lift and mobility equipment maintenance expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$2,400.00 to be paid for the remainder of Nicole's life, this amount increasing at the rate of four percent (4%), compounded annually from the date of judgment;

s. For future unreimbursable Rifton Ranger with trunk support expenses, beginning on the anniversary of the date of judgment in the year 2010, a lump sum amount of \$1,105.00; then beginning on the anniversary of the date of judgment in the year 2017, a lump sum amount of \$1,540.00; then beginning on the anniversary of the date of judgment in the year 2018, an annual amount of \$154.00 to be paid for the remainder of Nicole's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment;

t. For future unreimbursable YWCA membership expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$363.00 to be paid up to the anniversary of the date of judgment in the year 2061, then beginning on the anniversary of the date of judgment in year 2061, an annual amount of \$325.00 to be paid for the remainder of Nicole's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment;

u. For future unreimbursable daily living adaptive equipment 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 Nicole's life, this amount increasing at the rate of four percent (4%), compounded annually from the date of judgment; and,

v. For future unreimbursable home modification expenses, beginning on the anniversary of the date of judgment in the year 2030, a lump sum amount of \$25,000.00; then beginning on the anniversary of the date of judgment in the year 2040, a lump sum amount of \$25,000.00; then beginning on the anniversary of the date of judgment in the year 2060, a lump sum amount of \$25,000.00, all amounts increasing at the rate of four percent (4%), 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 or to Nicole in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to the petitioner or to

Nicole and do not require that the payment be made in one annual installment. The petitioner or Nicole will continue to receive the annuity payments from the Life Insurance Company only so long as Nicole is alive at the time that a particular payment is due. Petitioner or the personal representative of Nicole's estate shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Nicole's death.

12. 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 9 herein, the amounts awarded pursuant to paragraph 13 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.

13. 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.

14. Payments made pursuant to paragraph 9 and any amounts awarded pursuant to paragraph 13 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. 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 either immediately or as part of the annuity contract, will be used solely for the benefit of Nicole 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).

16. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Nicole's estate under the laws of the Commonwealth of Pennsylvania. No payments shall be made until petitioner provides respondent with documentation establishing that she has been appointed as the guardian/ conservator of Nicole's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian /conservator of the estate of Nicole Shaffer 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 Nicole Shaffer upon submission of written documentation of such appointment to the Secretary. In the event that petitioner relocates to another state or territory, petitioner agrees to become duly authorized to serve as Legal Guardian of Nicole's Estate in the state or territory where Nicole resides.

17. In return for the payments described in paragraphs 9 and 13, petitioner, in her individual capacity and as legal representative of Nicole, on behalf of herself, Nicole, and Nicole's 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 Nicole Shaffer resulting from, or alleged to have resulted from, the MMR, Hib and Prevnar vaccines administered to her on June 25, 2001, as alleged by petitioner in a petition for vaccine compensation filed on February 14, 2003, in the United States Court of Federal Claims as petition No. 03-349V.

18. If Nicole should die prior to receiving the payments described in paragraph 9, this agreement shall be considered voidable upon a proper notice to the Court on behalf of either

or both of the parties.

19. 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.

20. 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 13 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.

21. All rights and obligations of petitioner hereunder shall apply equally to her successors and assigns as legal representatives of Nicole Shaffer.

END OF STIPULATION

Respectfully submitted,

**PETITIONER:**

  
MICHELLE SHAFFER

**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
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Dated: 2-16-2007