In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-469V

Filed: September 22, 2011

Unpublished

MARK E. DEWEESE,	*	
	*	
Petitioner,	*	
	*	Stipulation; Measles-mumps-rubella
v.	*	vaccine, MMR; Hepatitis A vaccine,
	*	Hep A; Inactivated polio vaccine,
SECRETARY OF THE DEPARTMENT	*	IPV; Tetanus-diphtheria-acellular
OF HEALTH AND HUMAN SERVICES,	*	pertussis, Tdap; Thrombocytopenic
	*	purpura, TP
Respondent.	*	

Andrew D. Downing, Rhodes, Hieronymus, et al., Tulsa, OK, for Petitioner.
Chrysovalantis P. Kefalas, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION[1]

GOLKIEWICZ, Special Master.

On September 22, 2011, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleges that he suffered a Vaccine Table injury, thrombocytopenic purpura, "TP," or alternatively that the alleged injury was caused-in-fact by the Tdap, MMR, IPV, and Hep A vaccinations he received on January 30, 2008. Petitioner further alleges that he experienced the residual effects of the injury for more than six months. Respondent denies that petitioner suffered a Table injury and denies that petitioner's TP or any other injury and residual effects were caused-in-fact by the vaccines he received. Nonetheless, the parties agreed informally to resolve this matter. Stipulation ¶ 7.

[1] The undersigned intends to post this decision on the website for the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). **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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or 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. Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing. Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.**

The court hereby **ADOPTS** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. **Specifically, petitioner is awarded a lump sum of $100,000.00 in the form of a check payable to petitioner.** See Stipulation, ¶ 8.

The Clerk of the Court is directed to enter judgment accordingly.

IT IS SO ORDERED.[2]

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Special Master

[2] This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

MARK E. DEWEESE, Petitioner, v. SECRETARY OF HEALTH AND HUMAN SERVICES, Respondent.	)	No. 09-469V Special Master Golkiewicz ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Mark E. DeWeese ("petitioner") 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 petitioner's receipt of the measles-mumps-rubella ("MMR"), hepatitis A ("Hep-A"), inactivated polio ("IP"), and tetanus-diphtheria-acellular pertussis ("Tdap") vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).[1]

2. Petitioner received MMR, Hep-A, IP, and Tdap vaccinations on January 30, 2008.

3. The vaccines were administered within the United States.

4. Petitioner alleges he sustained the first symptom or manifestation of the onset of

[1] The petition also implicated the typhoid IV polysaccharide vaccine. Injuries resulting from the typhoid VI polysaccharide vaccination are not compensable under the Act as that vaccine is not included in the Vaccine Injury Table. *See* 42 U.S.C. § 300aa-14 and 42 C.F.R. § 100.3(a).

thrombocytopenic purpura ("TP") within the time period set forth in the Table, 42 C.F.R. § 100.3 (a)(V), as a consequence of receiving the MMR vaccine ("Table injury") or, alternatively, that he sustained a vaccine-related injury diagnosed as TP that was caused-in-fact by the MMR, Hep-A, IP, and/or Tdap vaccines. He further alleges that he experienced the residual effects of his injury for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his injury.

6. Respondent denies that petitioner suffered a Table injury and denies that petitioner's TP or any other injury and residual effects were caused-in-fact by the MMR, Hep-A, IP, and/or Tdap vaccines.

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 $100,000.00 in the form of a check payable to petitioner. 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 parties will submit to further proceedings before

the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and his attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

11. 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.

12. 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).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity and on behalf of himself, his heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out

of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the MMR, Hep-A, IP, and Tdap vaccinations administered on January 30, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about July 21, 2009, in the United States Court of Federal Claims as petition No. 09-469V.

14. If petitioner should die prior to entry of judgment, this agreement shall be 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 voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated 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. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that petitioner suffered the onset of TP within the time period set forth in the Table; that his current condition is a sequela of his alleged Table injury; or

that his TP or any other injury that was caused-in-fact by the MMR, Hep-A, IP, and/or Tdap vaccines.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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Respectfully submitted,

PETITIONER:

MARK E. DEWEESE

ATTORNEY OF RECORD FOR PETITIONER:

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Dated: 22 September 2011