

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 09-294V
Filed: March 22, 2011
Unpublished

JAMES TIDWELL,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Stipulation; Influenza vaccine;
Guillain-Barré Syndrome, GBS

Ronald Craig Homer, Conway, Homer & Chin-Caplan, P.C., Boston, M.A., for Petitioner.
Althea Walker Davis, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

GOLKIEWICZ, Special Master.

On March 21, 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 sustained the first symptom or manifestation of the onset of Guillain-Barré Syndrome, GBS, as a consequence of the influenza vaccination he received on November 30, 2006. Petitioner further alleges that he experienced the residual effects of the injury for more than six months. Respondent denies that petitioner suffered the onset of GBS as a result of his November 30, 2006, influenza vaccine and denies that the influenza vaccine caused his GBS and current disabilities. Nonetheless, the parties agreed informally to resolve this matter. Stipulation, filed March 21, 2011.

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. A lump sum of \$204,295.53, which amount represents first year life care expenses (\$25,782.32), actual and projected pain and suffering (\$170,000.00), and past out-of-pocket expenses (\$8,513.21), in the form of a check payable to petitioner;
- b. A lump sum of \$27,027.26, representing reimbursement for the State of Tennessee Medicaid lien, in the form of a check payable to petitioner and Bureau of TennCare, State of Tennessee, Third Party Liability Division, 210 Great Circle Rd., 4th Floor, Nashville, TN 37243, Attn: Ms. Tammy Pye;
- c. A lump sum of \$368,028.53, representing reimbursement for the State of Tennessee Medicaid lien, in the form of a check payable to petitioner and Ingenix Subrogation Services, 75 Remittance Drive, Ste. 6019, Chicago, IL, 60675-6019, Attn: Jon Perlinger; and
- d. An amount sufficient to purchase the annuity contract described in ¶ 10 of the Stipulation, paid to the life insurance company from which the annuity will be purchased and under the terms set forth in the Stipulation.

See Stipulation, ¶ 8, filed March 21, 2011.

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.

_____)
JAMES TIDWELL,)
)
Petitioner,)
v.)
)
SECRETARY OF HEALTH)
AND HUMAN SERVICES,)
)
Respondent.)
_____)

No. 09-294V
Special Master Golkiewicz

STIPULATION

The parties hereby stipulate to the following matters:

1. James Tidwell, 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 influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received his influenza immunization on November 30, 2006.
3. The vaccination was administered within the United States.
4. Petitioner alleges that he sustained the first symptom or manifestation of the onset of Guillain Barré Syndrome ("GBS") on or about December 8, 2006, and that he experienced the residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on his behalf as a result of his condition.
6. Respondent denies that petitioner suffered the onset of GBS as the result of his

November 30, 2006 influenza vaccination and denies that the influenza vaccine caused his GBS and current disabilities.

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 payments:

a. A lump sum of \$204,295.53, which amount represents first year life care expenses (\$25,782.32), actual and projected pain and suffering (\$170,000.00), and past out-of-pocket expenses (\$8,513.21), in the form of a check payable to petitioner;

b. A lump sum of \$27,027.26, representing reimbursement for the State of Tennessee Medicaid lien, in the form of a check payable to petitioner and

Bureau of TennCare
State of Tennessee
Third Party Liability Division
210 Great Circle Road
4th Floor
Nashville, TN 37243
Attn: Ms. Tammy Pye;

c. A lump sum of \$368,028.53, representing reimbursement for the State of Tennessee Medicaid lien, in the form of a check payable to petitioner and

Ingenix Subrogation Services
75 Remittance Drive
Suite 6019
Chicago, IL 60675-6019
Attn: Jon Perlinger; and

d. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

9. 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.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for petitioner's benefit, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for the following items of compensation:

- a. For future unreimbursable Medicare Advantage Premium and Prescription and Physician co-pay expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$5,312.32 to be paid for the remainder of petitioner's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment;
- b. For future unreimbursable Electric Scooter, Scooter Lift/Carrier, All Weather Scooter Cover, and Cane expenses, on the anniversary of the date of judgment in 2018, a lump sum of \$3,872.00, increasing at the rate of four percent (4%), compounded annually from the date of judgment;
- c. For future unreimbursable Tub/Shower Bench expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$23.33 to be paid for the remainder of petitioner's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment; and

d. For unreimbursable Home Health Aide expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$13,104.00 to be paid for the remainder of petitioner's life, 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 in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment. Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as petitioner is alive at the time that a particular payment is due. Written notice to the Secretary of Health and Human Services and the Life Insurance Company shall be provided within twenty (20) days of petitioner's death.

11. 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 8 herein and the amounts awarded pursuant to paragraph 12 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.

12. 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.

13. 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.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 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, and past unreimbursable expenses, the money provided pursuant to this Stipulation either immediately or as part of the annuity contract, will be used solely for petitioner's benefit 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. In return for the payments described in paragraphs 8 and 12, petitioner, in his individual capacity, and on behalf of 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. § 300 aa-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 influenza vaccination administered on November 30, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about May 11, 2009, in the United States Court of Federal Claims as petition No. 09-294V.

17. 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.

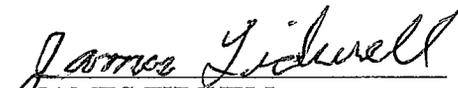
18. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

19. 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 12 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.

20. Petitioner hereby authorizes respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine

Respectfully submitted,

PETITIONER:


JAMES TIDWELL

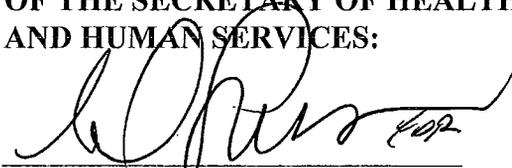
**ATTORNEY OF RECORD FOR
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 by Joseph M. Pepper
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Dated: 21 March 2011