

payable to petitioner; an amount of \$50,000.00 to purchase an annuity contract described in paragraph 10 of the Stipulation, paid to the life insurance company from which the annuity will be purchased; and a lump sum of \$90.86, which amount represents compensation for reimbursement of the state's Medicaid lien, in the form of a check payable jointly to petitioner and TMHP/Medicaid, Tort Receivables, 12357-B Riata Trace Parkway, Austin, TX 78720, attn: Kathie Wilkerson. See Stipulation, filed July 3, 2008 para. 8. The Clerk of the Court is directed to enter judgment accordingly.²

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

²Pursuant 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.

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MICHAEL PEACE, legal representative of a)
minor child, ANAYA SHANELLE)
PEACE,)

Petitioner,)

v.)

SECRETARY OF HEALTH AND)
HUMAN SERVICES,)

Respondent.)

No. 05-1258V

Chief Special Master Golkiewicz

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of his daughter, Anaya Shanelle Peace (“Anaya”), 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 Anaya’s receipt of the diphtheria-tetanus-acellular pertussis (“DTaP”), measles-mumps-rubella (“MMR”), varicella, hepatitis A, hepatitis B, haemophilus influenza type B (“HiB”), and inactive polio vaccine (“IPV”), which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).

2. Anaya received her immunizations on August 16, 2004.

3. The vaccines were administered within the United States.

4. Petitioner alleges that Anaya developed Guillain-Barre Syndrome, ataxia, and urinary incontinence as result of her August 16, 2004, vaccinations.

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

6. Respondent denies that Anaya's Guillain-Barre Syndrome, ataxia, and urinary incontinence were caused-in-fact by one or more of her August 16, 2004, vaccinations.

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 \$1,953.60 in the form of a check payable to Michael Peace. This amount represents compensation for past unreimbursable expenses;
- b. An amount of \$50,000.00 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"). The amount described herein represents compensation under 42 U.S.C. § 300aa-15(a); and
- c. A lump sum of \$90.86, which amount represents compensation for reimbursement of the state's Medicaid lien, in the form of a check payable jointly to petitioner and TMHP/Medicaid, Tort Receivables, 12357-B Riata Trace Parkway, Austin, TX 78720, Attn: Kathie Wilkerson.

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 the benefit of Anaya Peace, pursuant to which the Life Insurance Company will agree to make payments periodically to Anaya as follows:

Beginning January 8, 2018, \$892.50 per month for 10 years certain only.

The purchase price of the annuity shall not exceed \$50,000.00. The monthly amount set forth above represents an estimate of the annuity stream that could be purchased for \$50,000.00. In the event that the cost of the annuity payments set forth above varies from \$50,000.00, the monthly payments beginning January 8, 2018, shall be adjusted to ensure that the total cost of the annuity is neither less nor greater than \$50,000.00. Anaya will receive her annuity payments from the life insurance company for the ten year guaranteed period indicated above. Should Anaya predecease the exhaustion of certain payments during this period, any remaining payments shall be made to her estate. However, petitioner shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of Anaya Peace'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. 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.

14. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees, litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation as part of the annuity contract, will be used solely for the benefit of Anaya 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).

15. In return for the payments described in paragraphs 8 and 12, petitioner, in his individual capacity and as legal representative of Anaya, on behalf of himself, Anaya, 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 Anaya resulting from, or alleged to have resulted from, the vaccinations administered on August 16, 2004, as alleged by petitioner in a petition for vaccine compensation filed on or about December 5, 2005, in the United States Court of Federal Claims as petition No. 05-1258V.

16. If Anaya should die prior to receiving any or all of the payments 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.

17. 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.

18. 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 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.

19. All rights and obligations of petitioner hereunder shall apply equally to his successors and assigns as legal representatives of Anaya Shanelle Peace.

END OF STIPULATION