

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-621V

Filed: September 30, 2010

Unpublished

AUREALIO LEAL RAMIREZ and ESTHELA *
ROSAS COVARRUBIAS, natural parents of a *
minor child, FREDDIE LEAL ROSAS *

Petitioners, *

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Decision on Stipulation; Influenza
vaccination; Brachial neuritis; Left
arm weakness, muscle atrophy and
winging scapula as sequelae

DECISION¹

On September 27, 2010, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Stipulation, filed September 27, 2010. Petitioners allege that their son, Freddie Leal Rosas, suffered brachial neuritis and subsequently left arm weakness, muscle atrophy and winging scapula as a consequence of the influenza vaccination he received on October 29, 2005. "Respondent denies that the vaccine caused [petitioners' son's] brachial neuritis and current disabilities and denies that his current disabilities are sequelae of his alleged injury." Nonetheless, the parties agreed informally to resolve this matter.

The court hereby **ADOPTS** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. **Specifically, petitioners are awarded:**

- **A lump sum of \$25,000.00 in the form of a check payable to the court-appointed conservator of Freddie's estate;**
- **A lump sum of \$673.50 in the form of a check jointly payable to petitioners and GHS(Greer Memorial Hospital in Greenville Hospital System), c/o Medical Data Systems, PO Box 938, Vero Beach, FL 32960, Tax ID#: 57-6007863;**

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.

- A lump sum of \$8,619.70 in the form of a check jointly payable to petitioners and Greenville Hospital System, Patient Financial Services, 255 Enterprise Blvd., Suite 210, Greenville, SC 29615, Tax ID #: 57-6007863;
- A lump sum of \$2,756.70 in the form of a check jointly payable to petitioners and GHS University Medical Group, Attn: Christin Nixon, 7 Independence Point, Suite 140, Greenville, SC 29615, Tax ID#: 57-6007863;
- A lump sum of \$703.80 in the form of a check jointly payable to petitioners and CMD Faculty Physicians a/k/a Carolina Physician Network, PO Box 70826, Charlotte, NC 28272, Tax ID#: 56-1494829;
- A lump sum of \$424.00 in the form of a check jointly payable to petitioners and Regional Emergency Physicians, Attn: Richard G. Byrd, M.D., Regional Med LLC, 101 East Wood Street, Spartanburg, SC 29303, Tax ID#: 02-0534358;
- A lump sum of \$766.00 in the form of a check jointly payable to petitioners and Business Revenue Systems, Inc., o/b/o Greenville Radiology, P.A., PO Box 8986, Fort Wayne, IN 46898, Tax ID#35-1554423.
- An amount sufficient to purchase the annuity contract described in ¶ 10 of the parties' Stipulation, according to the terms of the Stipulation, paid to the life insurance company from which the annuity will be purchase.²
- A lump sum of \$13,295.59 in the form of a check payable to petitioners' attorney, Joe Mooneyham, Esq., for attorneys' fees and costs.³

See Stipulation, ¶ 8.

The Clerk of the Court is directed to enter judgment accordingly.⁴

IT IS SO ORDERED.

Gary J. Golkiewicz by Christin Nixon

 Gary J. Golkiewicz
 Special Master

² Respondent agrees "to purchase an annuity contract from the Life Insurance Company for the benefit of Freddie, pursuant to which the Life Insurance Company will agree to make payments periodically to Freddie Leal Rosas for pain and suffering as follows: a. Beginning April 18, 2017, \$20,000.00 per year, payable annually, for 4 years certain only; and b. Beginning April 18, 2021, \$1,028.11 per month for 10 years certain only." Stipulation ¶ 10.

³ Pursuant to General Order #9, petitioners aver they incurred no out-of-pocket expenses in proceeding on the Petition. Stipulation at ¶ 8(i).

⁴ 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.

disabilities and denies that his current disabilities are sequelae of his alleged injury.

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 petitioners have 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 \$25,000.00 in the form of a check payable to the court appointed conservator of Freddie's estate. This amount represents compensation for damages that would be available under 42 U.S.C. §300aa-15(a);

b. A lump sum of \$673.50, which amount represents reimbursement of past unreimbursable expenses, in the form of a check jointly payable to petitioners and

GHS (Greer Memorial Hospital in Greenville Hospital System)
c/o Medical Data Systems
P.O. Box 938
Vero Beach, FL 32960
Tax ID#: 57-6007863;

c. A lump sum of \$8,619.70, which amount represents reimbursement of past unreimbursable expenses, in the form of a check jointly payable to petitioners and

Greenville Hospital System
Patient Financial Services
255 Enterprise Blvd., Suite 210
Greenville, SC 29615
Tax ID#: 57-6007863;

d. A lump sum of \$2,756.70, which amount represents reimbursement of past unreimbursable expenses, in the form of a check jointly payable to petitioners and

GHS University Medical Group
Attn: Christin Nixon
7 Independence Point, Suite 140
Greenville, SC 29615
Tax ID#: 57-6007863;

e. A lump sum of \$703.80, which amount represents reimbursement of past unreimbursable expenses, in the form of a check jointly payable to petitioners and

CMC Faculty Physicians a/k/a Carolina Physician Network
P.O. Box 70826
Charlotte, NC 28272
Tax ID#:56-1494829;

f. A lump sum of \$424.00, which amount represents reimbursement of past unreimbursable expenses, in the form of a check jointly payable to petitioners and

Regional Emergency Physicians
Attn: Richard G. Byrd, M.D.
Regional Med LLC
101 East Wood Street
Spartanburg, SC 29303
Tax ID#:02-0534358;

g. A lump sum of \$766.00, which amount represents reimbursement of past unreimbursable expenses, in the form of a check jointly payable to petitioners and

Business Revenue Systems, Inc.
o/b/o Greenville Radiology, P.A.
P.O. Box 8986
Fort Wayne, IN 46898
Tax ID#:35-1554423;

h. 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"). The amount described herein represents compensation for all remaining elements of compensation that would be available under 42 U.S.C. § 300aa-15(a); and

i. A lump sum of \$13,295.59 in the form of a check payable to petitioners' attorney, Joe Mooneyham, Esq., for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioners have incurred no out-of-pocket

expenses in proceeding on the petition.

9. The Life Insurance Company must have a minimum of \$250,000,000.00 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 Freddie, pursuant to which the Life Insurance Company will agree to make payments periodically to Freddie Leal Rosas for pain and suffering as follows:

- a. Beginning April 18, 2017 (age 18), \$20,000.00 per year, payable annually, for 4 years certain only; and
- b. Beginning April 18, 2021 (age 22), \$1,028.11 per month for 10 years certain only.

The certain payments provided in this paragraph 10 shall be made as set forth above. Should Freddie predecease the exhaustion of the certain payments during the certain period specified above, any remaining payments shall be made to his estate or to his designated beneficiaries.

Written notice to the Secretary of Health and Human Services and the Life Insurance Company shall be provided within twenty (20) days of Freddie'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 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. Petitioners and their 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.

13. Payments made pursuant to paragraph 8 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 either immediately or as part of the annuity contract, will be used solely for the benefit of Freddie 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. Petitioners represent that Chadwicke L. Groover, Esq., has been duly authorized to serve as conservator of Freddie Leal Rosas's estate under the laws of the State of South Carolina until he is relieved of such duties by the appointing probate court. No payments pursuant to this

Stipulation shall be made until petitioners provide the Secretary with documentation establishing the appointment of the conservator of Freddie's estate. If Chadwicke Groover is not authorized by a court of competent jurisdiction to serve as conservator of the estate of Freddie Leal Rosas 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 conservator of the estate of Freddie Leal Rosas upon submission of written documentation of such appointment to the Secretary.

16. In return for the payments described in paragraph 8, petitioners, in their individual capacity and as legal representatives of Freddie, on behalf of themselves, Freddie, and his heirs, executors, administrators, successors or assigns, do 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 Freddie resulting from, or alleged to have resulted from, the flu vaccination administered on October 29, 2005, as alleged by petitioners in a petition for vaccine compensation filed on or about August 20, 2007, in the United States Court of Federal Claims as petition No. 07-621V.

17. If Freddie 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. 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. Petitioners hereby authorize the respondent to disclose documents filed by petitioners in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

21. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Freddie's current disabilities are sequelae of his alleged injury, or that the flu vaccine caused his brachial neuritis or current disabilities.

22. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of Freddie Leal Rosas.

END OF STIPULATION

Respectfully submitted,

PETITIONERS:

Aurelio Leal Ramirez
AURELIO LEAL RAMIREZ

Estela Rosas Coavarrubias
ESTHELA ROSAS COAVARRUBIAS

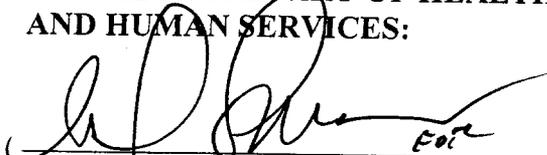
**ATTORNEY OF RECORD FOR
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P.O. Box 8359
Greenville, SC 29605
(864) 421-0036

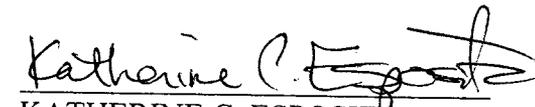
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Dated: 9/27/10