

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 07-0229V
(Not to be published¹)

*
MEGAN SHARLIKE, *
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

Filed: August 4, 2011

Decision by Stipulation; Damages;
Tetanus-Diphtheria Vaccination;
Chronic Rash and Scarring

DECISION

HASTINGS, Special Master.

This is an action seeking an award under the National Vaccine Injury Compensation Program² on account of an illness suffered by Megan Sharlike.

On August 2, 2011, counsel for both parties filed a Stipulation (attached hereto), stipulating that a decision should be entered granting compensation. The parties have stipulated that petitioner shall receive the following compensation:

- A lump sum of \$20,000.00 in the form of a check payable to petitioner; and

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 *et seq.* (2006 ed.). Hereinafter, for ease of citation, all "§" references will be to 42 U.S.C. (2006 ed.).

- The respondent shall expend \$80,000.00 to purchase an annuity contract, requiring that periodic payments be made to petitioner.

Under the statute governing the Program, as well as the “Vaccine Rules” adopted by this court, the special master must now enter a decision endorsing that Stipulation, and the clerk must enter judgment, in order to authorize payment of the award. See § 300aa-12(d)(3)(A) and e(3); § 300aa-13(a); Vaccine Rules 10(a), 11(a).³

I have reviewed the file, and based on that review, I conclude that the parties’ stipulation appears to be an appropriate one. Accordingly, I conclude that a Program award shall be made to petitioner as set forth in the Stipulation.

1. Respondent shall pay petitioner a lump sum of \$20,000.00, in the form of a check made payable to petitioner.
2. I consider it in Megan’s best interest that part of her compensation be paid in the form of an annuity, which shall be purchased as soon as practicable after entry of judgment. Accordingly, pursuant to 42 U.S.C. § 300aa-15(f)(4), I order respondent to purchase, and take ownership of, an annuity contract,⁴ pursuant to which the life insurance company will agree to make periodic payments to Megan Sharlike for future vaccine-related expenses, as described in paragraph 10 of the Stipulation.

Accordingly, my decision is that a Program award shall be made to petitioner as set forth above. In the absence of a timely-filed motion for review of this Decision, the clerk shall enter judgment in accordance herewith.

IT IS SO ORDERED.

/s/ George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master

³ The “Vaccine Rules of the United States Court of Federal Claims” are found at Appendix B of the Rules of the United States Court of Federal Claims.

⁴ The annuity contract shall be purchased from a life insurance company that meets the following criteria, adapted from the Stipulation:

The life insurance company must

- 1) have a minimum of \$250,000,000 of capital and surplus, exclusive of any mandatory security valuation reserve; and
- 2) 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.

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

MEGAN SHARLIKE,)	
)	
Petitioner,)	No. 07-229V
v.)	Special Master George Hastings
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Christine Sharlike filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the “Vaccine Program”), on behalf of her minor daughter, Megan Sharlike.¹ The petition seeks compensation for injuries allegedly related to petitioner’s receipt of the Tetanus-diphtheria (“Td”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).

2. Petitioner received Td and Measles-Mumps-Rubella (“MMR”) immunizations on April 6, 2004.

3. The vaccines were administered within the United States.

4. Petitioner alleges that she sustained the first symptom or manifestation of the onset of a chronic rash on or about April 27, 2004. She further alleges that she developed blisters and scarring as sequelae of her injury, and that she experienced residual effects of this injury for more than six months.

¹ On April 7, 2011, the caption was amended to reflect Megan Sharlike as the petitioner now that she has reached the age of majority.

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

6. Respondent denies that the Td or MMR vaccines caused petitioner to suffer the onset of a chronic rash, blisters, or scarring, and denies that her current disabilities are sequelae of her 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 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 \$20,000.00 in the form of a check payable to petitioner; and
- b. A sum of \$80,000.00 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 above amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

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 at a cost of \$80,000.00 for the benefit of petitioner Megan Sharlike, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for future vaccine-related expenses as follows:

a. Beginning one year from the date of purchase of the annuity, a sum of \$1,200.00 payable monthly for 4 years guaranteed (48 payments guaranteed); and

b. A guaranteed lump sum payment of \$31,417.00 to be paid on June 24, 2022.

The purchase price of the annuity shall not exceed \$80,000.00. The above amounts represent an estimate of the annuity stream that could be purchased for \$80,000.00. In the event that the cost of the annuity payments set forth above varies from \$80,000.00 due to market rate fluctuations on the date the annuity is purchased, the payments described in paragraph 10 (a) above shall be adjusted downward or upward accordingly to ensure that the total cost of the annuity will not be greater than or less than \$80,000.00.

Petitioner will receive the annuity payments from the Life Insurance Company for the guaranteed period. Should petitioner predecease the exhaustion of payments during the guarantee period described above, any remaining payments shall be made payable to the Estate of Megan Sharlike. 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 her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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 by 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, the money provided pursuant to this Stipulation either immediately or as part of the annuity contract, 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).

16. In return for the payments described in paragraphs 8 and 12, petitioner, in her individual capacity, and on behalf of her 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 Td and MMR vaccinations administered on April 6, 2004, as alleged by petitioner in a petition for vaccine compensation filed on or about April 9, 2007, in the United States Court of Federal Claims as petition No. 07-229V.

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 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 petitioner suffered the onset of a chronic rash, blisters, or scarring as the result of her Td or MMR vaccines, or that her current disabilities are sequelae of alleged vaccine-related injury.

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

END OF STIPULATION

/

/

/

Respectfully submitted,

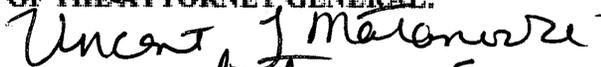
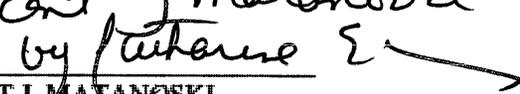
PETITIONER:


MEGAN SHARLIKE

**ATTORNEY OF RECORD FOR
PETITIONER:**


CHRISTOPHER J. BURCHINAL, ESQUIRE
P.O. Box 412
Delaware, Ohio 43015
(740) 272-2294

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


by 
VINCENT J. MATANOSKI
Acting Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**


GEOFFREY EVANS, M.D.
Director, Division of
Vaccine Injury Compensation
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 11C-26
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


ALTHEA WALKER DAVIS
Senior Trial Counsel
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-0515

Dated: 2 August 2011