

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-324 V

Filed: June 11, 2012

Not for Publication

JACQUELYNE WARRICK, parent of
ARLEIGH WARRICK, a minor,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Damages Decision Based on
Stipulation; DTaP Vaccine;
Infantile Spasms and Developmental
Delay

Ronald C. Homer, Boston, MA, for petitioner.
Jennifer L. Reynaud, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On June 11, 2012, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioner alleges that the vaccinee suffered from infantile spasms and developmental delay following a Diphtheria-Tetanus-acellular-Pertussis (“DTaP”) vaccination. Respondent denies that the vaccinee’s infantile spasms and developmental delay were caused in fact by her DTaP vaccination. Nonetheless, the parties agreed to resolve this matter informally.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall redact such material from public access.

The court finds the terms to be reasonable, hereby adopts the parties' stipulation, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. A lump sum of **\$187,630.44** in the form of a check payable to petitioner as guardian/conservator of Arleigh's estate; and
- b. A lump sum of **\$12,369.56** in the form of a check payable to petitioner.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: June 11, 2012

/s/ Laura D. Millman

Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

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**SECRETARY OF HEALTH AND
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No. 10-324V
SPECIAL MASTER
LAURA MILLMAN
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her daughter, Arleigh Warrick (“Arleigh”), 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 Diphtheria-Tetanus-acellular-Pertussis (“DTaP”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Arleigh received a DTaP immunization on September 13, 2007.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Arleigh developed infantile spasms and subsequent developmental delay that were caused-in-fact by the DTaP vaccine. She also alleges that Arleigh experienced the residual effects of her 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 behalf Arleigh as a result of her condition.

6. Respondent denies that Arleigh's infantile spasms and residual effects were caused-in-fact by the DTaP vaccine and denies that Arleigh experienced the residual effects of these injuries for more than six months. Respondent further denies that the DTaP caused Arleigh any other injury or her current condition.

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 \$187,630.44 in the form of a check payable to petitioner as guardian/conservator of Arleigh's estate; and
- b. A lump sum of \$12,369.56 in the form of a check payable to petitioner. This amount represents Arleigh's past unreimbursable medical expenses incurred by petitioner.

These amounts represent 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 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.

11. Payments made pursuant to paragraph 8 and 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 Arleigh 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Arleigh's estate, under the laws of the State of Mississippi. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Arleigh's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Arleigh Warrick 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 guardian/conservator of the estate of Arleigh Warrick, upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of Arleigh, on behalf of herself, Arleigh, and Arleigh's 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 DTaP vaccine administered on September 13, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about May 27, 2010, in the United States Court of Federal Claims as petition No. 10-324V.

15. If Arleigh 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.

16. 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.

17. 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

Respectfully submitted,

PETITIONER:

Cacquelaine Warrick
CACQUELAINE WARRICK

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PETITIONER:

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Dated: *June 11, 2012*