

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

WILL AND NANCY BRAVEMAN *
as parents and guardians of *
LEO ALEXANDER BRAVEMAN, *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 08-137V
Special Master Christian J. Moran

Filed: October 6, 2008

Stipulation; attorneys' fees and costs;
MMR vaccine; idiopathic
thrombocytopenic purpura.

UNPUBLISHED DECISION¹

Alan C. Milstein, Esq., Pennsauken, NJ, for Petitioner;
Darryl R. Wishard, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On October 3, 2008, the parties filed a joint stipulation concerning the petition for compensation filed by Will and Nancy Braveman on behalf of their minor son, Leo Alexander Braveman, on March 7, 2008. In their petition, the Bravemans alleged that the combined measles, mumps, and rubella ("MMR") vaccine, which vaccine is contained in the Vaccine Injury Table, 42 C.F.R. §100.3 (a)(V), and which Leo received on June 1, 2007, caused him to develop idiopathic thrombocytopenic purpura ("ITP").

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document's disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Respondent agrees that Leo's injury meets the criteria for a Table injury of ITP within 7-30 days of the MMR vaccination. However, Respondent denies that Leo's condition persisted for at least 6 months post vaccination as required by section 11(c)(1)(D)(I) of the Vaccine Act. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

A lump sum payment of \$15,000.00 in the form of a check payable to petitioners.

This amount represents compensation for all damages that would be available pursuant to 42 U.S.C. § 300aa-15(a).

A lump sum payment of \$14,550.86 in the form of a check payable to petitioners and petitioners' counsel, Alan C. Milstein, Esquire, for attorneys' fees and costs.

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 08-137V according to this decision and the attached stipulation.

Any questions may be directed to Francina Segbefia at (202) 357-6358.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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| _____ |) | |
| WILL and NANCY BRAVEMAN, |) | |
| as parents and guardians of |) | |
| LEO ALEXANDER BRAVEMAN, |) | |
| |) | |
| Petitioners, |) | |
| v. |) | No. 08-137V |
| |) | Special Master Moran |
| SECRETARY OF HEALTH AND HUMAN |) | ECF. |
| SERVICES, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, Leo Braveman (“Leo”), petitioners filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to Leo’s receipt of the combined measles, mumps, and rubella (“MMR”) vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a)(V).
2. Leo received his MMR vaccination on June 1, 2007.
3. The vaccine was administered within the United States.
4. Petitioners allege that Leo sustained the first symptom or manifestation of the onset of idiopathic thrombocytopenic purpura (“ITP”) within the time period set forth in the Table.
5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Leo as a result of his condition.
6. Respondent agrees that Leo’s alleged injury meets the criteria for a Table injury of ITP

within 7-30 days of the MMR. Respondent denies that Leo's condition persisted for at least six months post vaccination, as required by section 11(c)(1)(D)(i) of the Act.

7. Maintaining their above-stated positions, the parties nevertheless agree 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 \$15,000.00 in the form of a check payable to petitioners. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

b. A lump sum of \$14,550.86 in the form of a check payable to petitioners and petitioners' counsel, Alan C. Milstein, Esquire, for attorneys' fees and costs.

9. Payment 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.

10. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and costs, the money provided pursuant to this Stipulation will be used solely for the benefit of Leo 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).

11. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of Leo's estate under the laws of the Commonwealth of Pennsylvania. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Leo's estate. If petitioners are not authorized by a court of competent

jurisdiction to serve as guardians/conservators of the estate of Leo Braveman 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 guardians/conservators of the estate of Leo Braveman upon submission of written documentation of such appointment to the Secretary.

12. In return for the payment described in paragraph 8(a), petitioners, in their individual capacities and as legal representatives of Leo, on behalf of themselves, Leo, and his heirs, executors, administrators, successors or assigns, do forever fully and 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 Leo resulting from, or alleged to have resulted from, the MMR vaccination administered on June 1, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about March 7, 2008, in the United States Court of Federal Claims as petition No. 08-137V.

13. If Leo should die prior to receiving the payment described in paragraph 8(a), this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

14. 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.

15. This Stipulation expresses a full and complete settlement of liability and damages

Respectfully submitted,

PETITIONERS:


WILL BRAVEMAN


NANCY BRAVEMAN

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Dated: 10/3/2008