

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

GARY RAY,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 08-484V

Special Master Christian J. Moran

Filed: September 24, 2009

Stipulation; hepatitis B vaccinations;
rheumatoid arthritis.

UNPUBLISHED DECISION¹

Gary Ray, Pro Se Petitioner;

Voris E. Johnson, Jr., Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On September 22, 2009, the parties filed a joint stipulation concerning the petition for compensation filed by Gary Ray on July 2, 2008. In his petition, Mr. Ray alleged that the hepatitis B vaccine, which is contained in the Vaccine Injury Table, 42 C.F.R. §100.3 (a), and which Mr. Ray received in three doses on March 15, 2006, April 24, 2006, and November 21, 2006, caused him to suffer an adverse reaction, specifically rheumatoid arthritis.

Respondent denies that Mr. Ray's adverse reaction was caused by the hepatitis B vaccinations.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

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.

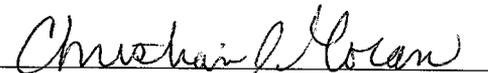
Damages awarded in that stipulation include:

- a. **A lump sum payment of \$610,869.34**, which amount represents compensation for first year, post-judgment, life care expenses (\$6,296.00); lost earnings (\$427,236.89); and pain and suffering (\$177,336.45) **in the form of a check payable to petitioner.**
- b. An amount sufficient to purchase an annuity contract described in the stipulation attached as Appendix A, paid to the life insurance company from which the annuity will be purchased. This amount represents compensation for all damages that would be available pursuant to 42 U.S.C. § 300aa-15(a).

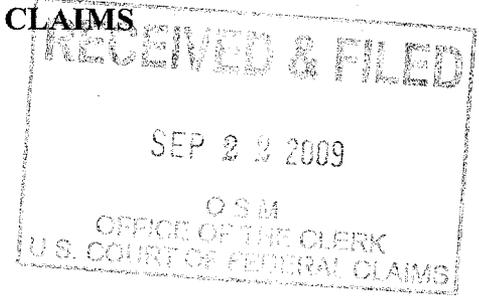
In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 08-484V according to this decision and the attached stipulation.

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

IT IS SO ORDERED.


Christian J. Moran
Special Master

THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS



GARY RAY,)
)
Petitioner,)
v.)
)
SECRETARY OF HEALTH AND HUMAN)
SERVICES,)
)
Respondent.)
)

No. 08-484V
Special Master Moran

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. Petitioner, Gary Ray, 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 his receipt of the Hepatitis B ("Hep B") vaccination, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received Hep B immunizations on March 15, 2006, April 24, 2006, and November 21, 2006 (the "Hep B vaccinations").
3. The Hep B vaccinations were administered within the United States.
4. Petitioner alleges that he suffered an adverse reaction, specifically rheumatoid arthritis, which was caused-in-fact by the Hep B vaccinations he received.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of himself as a result of his condition.

6. Respondent denies that petitioner's alleged adverse reaction was caused by the Hep B 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 \$610,869.34, which amount represents compensation for first year, post-judgment, life care expenses (\$6,296.00); lost earnings (\$427,236.89); and pain and suffering (\$177,336.45), in the form of a check payable to petitioner.
- b. 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.

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 Gary Ray, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for the following items of compensation:

a. For future un-reimbursable Medicare Part B premium and deductible expenses, beginning on the anniversary of the date of judgment in year 2011, an annual amount of \$1,291.80 to be paid up to the anniversary of the date of judgment in year 2019, increasing at the rate of five percent (5%), compounded annually from the date of judgment.

b. For future un-reimbursable rheumatologist, gastroenterologist, cardiologist, ophthalmologist, neurologist, and orthopaedist expenses, on the first anniversary of the date of judgment, a lump sum payment of \$1,020.00. Then, on the anniversary of the date of judgment in year 2011, a lump sum payment of \$204.00. Then, beginning on the anniversary of the date of judgment in 2012, an annual amount of \$240.00 to be paid up to the anniversary of the date of judgment in year 2019. Thereafter, beginning on the anniversary of the date of judgment in 2019, an annual amount of \$365.00, all amounts increasing at the rate of five percent (5%), compounded annually from the date of judgment.

c. For future un-reimbursable physical therapy and occupational therapy expenses, on the first anniversary of the date of judgment, a lump sum payment of \$1,400.00. Then, beginning on the anniversary of the date of judgment in year 2011, an annual amount of \$280.00 to be paid for the remainder of Gary Ray's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

d. For future un-reimbursable gas allowance and hotel expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$1,000.00 to be paid for the remainder of Gary Ray's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment. Petitioner will continue to receive

the annuity payments from the Life Insurance Company only so long as he, Gary Ray, is alive at the time that a particular payment is due. Petitioner's estate shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Gary Ray'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 special master shall preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

13. Payments made pursuant to paragraph 8 and any amount 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 of attorneys' fees and litigation costs, the money provided pursuant to this Stipulation as part of the annuity contract will be used solely for the benefit of petitioner, Gary Ray, 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 on behalf of his 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 himself resulting from, or alleged to have resulted from, the Hep B vaccinations administered to him, as alleged by petitioner in a petition for vaccine compensation filed on July 2, 2008, in the United States Court of Federal Claims as petition No. 08-484V.

16. If petitioner should die prior to receiving the payments 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.

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.

[END OF STIPULATION]

Respectfully submitted,

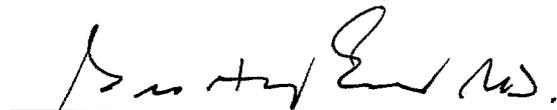
PRO SE PETITIONER:


GARY RAY 8/2/09

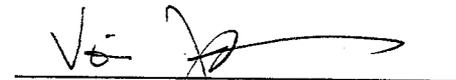
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Dated: 9/22/09