

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 04-735V

Filed: November 27, 2006

Not for Publication

STEFFANY NELSON, by Her Mother *
and Next Friend, LORA NELSON, *
*
Petitioner, *
*
v. * Stipulation; Attorneys' fees
and costs; fibromyalgia.
*
SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *
*
Respondent. *

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for petitioner.

Linda S. Renzi, United States Department of Justice, Washington, D.C., for respondent.¹

DECISION AND DECISION ON ATTORNEYS' FEES AND COSTS²

GOLKIEWICZ, Chief Special Master.

Petitioner Lora Nelson, on behalf of her minor daughter, Steffany Nelson, filed a petition on April 27, 2004 seeking an award pursuant to the National Vaccine Injury Compensation

¹Ms. Renzi has not filed a Notice of Appearance, but has represented respondent upon prior counsel's departure.

²The undersigned intends to post this 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). 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 trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and 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.

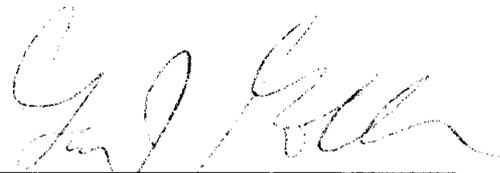
Program.³ In the petition, petitioner alleged that the hepatitis B vaccine that her daughter received on January 29, 2002 caused-in-fact Steffany's chronic arthralgia and fibromyalgia.

On October 30, 2006, counsel for both parties filed a stipulation, stipulating that a Decision should be entered granting compensation. See Attachment A. The parties also agreed that a Decision should be entered with respect to attorneys' fees and costs. Id. The parties stipulated that the following compensation be awarded:

- A. A lump sum of **\$25,000.00** in the form of a check payable to the petitioner, as guardian of Steffany's estate, or to Steffany Nelson when she reaches the age of 18 on July 29, 2007;
- B. A lump sum payment of **\$23,507.31** in the form of a check payable to petitioner and petitioner's attorney, Ronald C. Homer, for attorneys' fees and costs;
- C. A lump sum payment of **\$22.52** in the form of a check made payable to petitioner representing unreimbursed expenses incurred by petitioner in this proceeding.

Based on the undersigned's thorough review of the record, the parties' stipulation appears to be reasonable and the undersigned adopts the Stipulation. Accordingly, an award shall be made payable to petitioner as described above, and as set forth in Attachment A.⁴ The Clerk shall enter judgment accordingly.⁵

IT IS SO ORDERED.



Gary J. Golkiewicz
Chief Special Master

³The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 et seq. (2000 ed.). Hereinafter, for ease of citation, all "§" references will be to 42 U.S.C. (2000 ed.).

⁴This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs," as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See Beck v. Secretary of Health and Human Services, 924 F.2d 1029 (Fed. Cir. 1991).

⁵Pursuant 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 U.S. Court of Federal Claims Judge.

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

_____)	
STEFFANY NELSON, by her Mother)	
and Next Friend, LORA NELSON,)	
)	
Petitioner,)	by leave of the Special Master
)	
v.)	No. 04-735V
)	Chief Special Master
SECRETARY OF HEALTH AND HUMAN)	Golkeiwicz
SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her daughter, Steffany Nelson ("Steffany"), 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 Steffany's receipt of the hepatitis B vaccine ("Hep B"), which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 100.3 (a)(VIII).
2. Steffany received her third Hep B immunization on January 29, 2002.
3. The vaccine was administered within the United States.
4. Petitioner alleges that as a result of the January 29, 2002, Hep B immunization, Steffany suffers from chronic arthralgia and fibromyalgia.

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

6. Respondent denies that Steffany's chronic arthralgia was caused by the administration of a Hep B immunization.

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 \$25,000.00 in the form of a check payable to petitioner, as guardian of Steffany's estate, or to Steffany Nelson when she reaches eighteen years of age on July 29, 2007. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and,

b. A lump sum of 23,507.31 in the form of a check payable to petitioner and petitioner's attorney, Ronald C. Homer, for attorneys' fees and costs; and,

c. A lump sum payment in the form of a check payable to petitioner for \$22.52. This amount represents past unreimbursed expenses incurred by petitioner in proceeding on the petition.

9. 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.

10. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees, litigation costs, and past unreimbursed expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of Steffany 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. Petitioner represents that she is or within 90 days of the date of judgment will become, duly authorized to serve as guardian of Steffany's estate under the laws of the State of Arkansas. Except as set forth below, no payment pursuant to paragraph 8(a) of this stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian of Steffany's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as the guardian of the estate of Steffany Nelson prior to the time that Steffany reaches eighteen years of age, any payment under paragraph 8(a) shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian of the estate of Steffany Nelson upon written documentation of such appointment to the Secretary. If no such documentation is submitted prior to the

time Steffany Nelson reaches eighteen years of age (on July 29, 2007), the Secretary shall make the payment pursuant to paragraph 8(a) of this stipulation to Steffany Nelson once she has reached eighteen years of age.

12. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of Steffany on behalf of herself, Steffany, and her 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 Steffany resulting from, or alleged to have resulted from, the hepatitis B vaccination administered on January 29, 2002, as alleged by petitioner in a petition for vaccine compensation filed on or about April 27, 2004, in the United States Court of Federal Claims as petition No. 04-735.

13. If Steffany should die prior to the Secretary making any or all of the payments described in paragraph 8, 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 in the event 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.

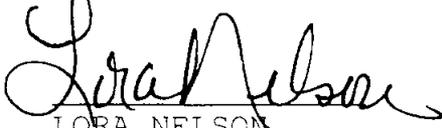
15. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

16. All rights and obligations of petitioner hereunder shall apply equally to her successors and assigns as legal representatives of Steffany Nelson.

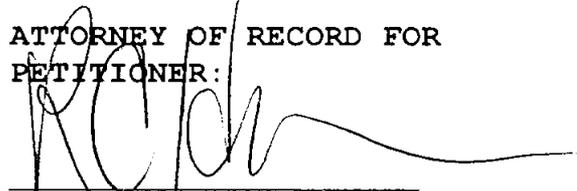
END OF STIPULATION

Respectfully submitted,

PETITIONER:


LORA NELSON

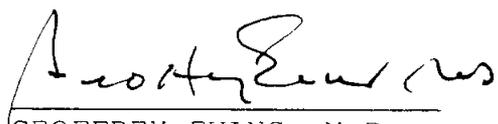
**ATTORNEY OF RECORD FOR
PETITIONER:**


RONALD C. HOMER
Conway, Homer and Chin-Caplan
16 Shawmut Street
Boston, Massachusetts 02116

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


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

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


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

**ATTORNEY OF RECORD FOR
RESPONDENT:**


LINDA S. RENZI
Senior Trial Counsel
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
(202) 616-4133

Dated: October 20, 2006