

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

No. 10-292V

Filed: January 9, 2012



Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,


Respondent.

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Stipulation; Influenza; GBS

DECISION ON JOINT STIPULATION¹

Vowell, Special Master:

 ["Petitioner"] filed a petition for compensation under the National Vaccine Injury Compensation Program² on May 14, 2010.³ Petitioner alleged that he developed Gullian-Barre Syndrome ["GBS"] as a result of an influenza vaccination he received on October 16, 2007, and he further alleged that he experienced residual effects of this injury for more than six months. See Stipulation, filed January 6, 2012, at ¶¶ 2, 4. Respondent denies that petitioner's GBS was caused-

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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 42 U.S.C. § 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 National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

³ Mr. Gonzalez passed away on November 10, 2010. After being appointed as the Independent Administrator for petitioner's estate by the state of Illinois, petitioner's widow, Edda M. Gonzalez, was substituted as petitioner.

in-fact by his influenza vaccination, that he suffered residual effects for greater than six months, and that his death was a sequel of his GBS. Stipulation at ¶ 6.

Nevertheless, the parties have agreed to settle the case. On January 6, 2012, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms.

Respondent agrees to pay petitioner:

A lump sum payment of **\$162,500.00** in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under § 300aa-15(a).

The special master adopts the parties' stipulation attached hereto, and awards compensation in the amount and on the terms set forth therein. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.²

IT IS SO ORDERED.

s/ Denise K. Vowell
Denise K. Vowell
Special Master

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

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

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|-------------------------|---|-----------------------|
| [REDACTED] |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 10-292V |
| |) | Special Master Vowell |
| |) | ECF |
| SECRETARY OF HEALTH AND |) | |
| HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |

STIPULATION

The parties hereby stipulate to the following matters:

1. On May 14, 2010, [REDACTED] (“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”).¹ The petition seeks compensation for injuries allegedly related to Mr. [REDACTED]’s receipt of the influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. [REDACTED] received an influenza immunization on October 16, 2007.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Mr. [REDACTED] suffered from Guillain- Barre Syndrome (“GBS”), which was caused-in-fact by his influenza vaccination. Petitioner further alleges that Mr.

¹ After the filing of his petition, Mr. [REDACTED] passed away. Thereafter, his widow, Edda Gonzalez was substituted as the petitioner in this case.

██████'s injuries persisted for more than six months, and contributed to his death on November 10, 2010.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of Mr. ██████'s GBS.

6. Respondent denies that Mr. ██████'s GBS was caused-in-fact by his influenza vaccination, denies that he suffered from residual effects of this injury for greater than six months, and denies that his death is a sequela of his GBS.

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 payment:

A lump sum of \$162,500.00 in the form of a check payable to petitioner. This amount represents 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 attorney's fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that they have identified to respondent all

known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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 entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8, and any amounts awarded pursuant to paragraph 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 attorney's fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation 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).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as the legal representative of the estate of [REDACTED] 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. § 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 Mr. Gonzalez resulting from, or alleged to have

resulted from, the influenza vaccination administered on October 16, 2007, as alleged by Mr. Gonzalez in a petition for vaccine compensation filed on or about May 14, 2010, in the United States Court of Federal Claims as petition No. 10-292V.

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 voidable at the sole discretion of either party.

15. 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 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the influenza vaccine caused petitioner's GBS or his death.

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

END OF STIPULATION

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Respectfully submitted,

PETITIONER:



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Dated: 1/6/12