

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 12-112V

Filed: October 10, 2012

NOT TO BE PUBLISHED

[REDACTED]

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Special Master Zane

Stipulation; influenza (flu) vaccine;
Guillain-Barré Syndrome (GBS)

Anne Carrión Toale, Maglio, Christopher & Toale, PA, Sarasota, FL, for Petitioner
Gordon Elliot Shemin, United States Dep't of Justice, Washington, D.C., for Respondent

UNPUBLISHED DECISION¹

ZANE, Special Master.

On October 9, 2012, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, [REDACTED], alleged that he suffered from Guillain-Barré Syndrome (“GBS”), which was caused-in-fact by his receipt of a trivalent influenza (“flu”) vaccine he received on October 14, 2010. Petitioner also alleges that he experienced the residual effects of this injury for more than six months and that he has not otherwise received compensation for such injuries. Petitioner seeks compensation for his injuries pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to 34.

¹ The special master intends to post this decision on the website of the United States Court of Federal Claims 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. As provided by Vaccine Rule 18(b), each party has 14 days within which to request the redaction from this decision of any such alleged material. In the absence of a timely request, which includes a proposed redacted decision, the entire document will be made publicly available.

Respondent denies that Petitioner's alleged GBS, or any other injury, was caused by his flu vaccination. Nonetheless, the parties have agreed informally to resolve this matter. *See* Stipulation, Appendix A hereto.

The court hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioner is awarded:

- (1) a lump sum of \$100,000.00, in the form of a check made payable to Petitioner, [REDACTED]** This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and
- (2) the amount of \$9,412.13 in a check made payable jointly to Petitioner [REDACTED] and Petitioner's counsel (Anne Carrión Toale, of Maglio, Christopher & Toale, PA),** for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, Petitioner confirms that she incurred no out-of-pocket litigation expenses in proceeding on the petition.

The court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/Daria J. Zane
Daria J. Zane
Special Master

² This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. Pursuant 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 United States Court of Federal Claims judge.

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

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| _____) | | |
| [REDACTED]) | | |
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| Petitioner,) | No. 12-112V | |
|)) | Special Master Zane | |
| v.) | ECF | |
|)) | | |
| SECRETARY OF HEALTH AND) | | |
| HUMAN SERVICES) | | |
|)) | | |
| Respondent.) | | |
| _____) | | |

STIPULATION

The parties hereby stipulate to the following matters:

1. 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 trivalent influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Petitioner received his flu vaccination on or about October 14, 2010.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the flu vaccine caused him to develop Guillain-Barré Syndrome (“GBS”) and that he experienced the residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his condition.
6. Respondent denies that the flu immunization is the cause of petitioner’s alleged GBS, and/or any other injury.

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 \$100,000.00 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); and

b. A lump sum of \$9,412.13 in the form of a check payable jointly to petitioner and petitioner's attorney, Anne Carrión Toale, Esq., for attorney's fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioner incurred no out-of-pocket litigation expenses in proceeding on the petition.

9. Petitioner and his 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 by entities that provide health services on a pre-paid basis.

10. 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.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' 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).

12. In return for the payments described in paragraph 8, petitioner, in his individual capacity, and on behalf of his heirs, executors, administrators, successors and/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 flu vaccination administered on October 14, 2010, as alleged by petitioner in a petition for vaccine compensation filed on or about February 16, 2012, in the United States Court of Federal Claims as petition No. 12-112V.

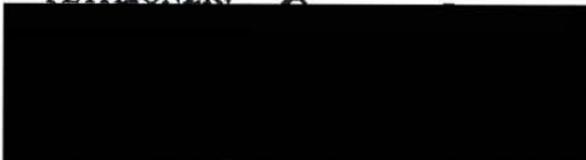
13. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

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. 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'

Respectfully submitted,

PETITIONER:



ATTORNEY OF RECORD FOR
PETITIONER:

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Dated: October 9, 2012