

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-195V
Filed: July 22, 2008

NOT TO BE PUBLISHED

JESSICA KUTTNER, as the Legal *
Representative of her minor son *
CALVIN KUTTNER, *

Petitioner, *

Stipulation; HepB; idiopathic
thrombocytopenic purpura (ITP)

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

DECISION¹

On July 16, 2008, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleged that Calvin suffered from idiopathic thrombocytopenic purpura (hereinafter ITP) as a result of his hepatitis B vaccine administered on June 15, 2004. Respondent continues to maintain his position to the contrary. Nonetheless, the parties agreed informally to resolve this matter.

The court hereby **adopts** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Specifically, petitioner is awarded a lump sum of \$70,000.00 in the form of a check payable to petitioner, as guardian of Calvin's estate. See Stipulation, filed July 16, 2008 para. 5. This amount represents

¹The 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.

compensation for all damages that would be available under 42 U.S.C. §300aa-15(a). The Clerk of the Court is directed to enter judgment accordingly.²

IT IS SO ORDERED.



Gary J. Gorkiewicz
Chief Special Master

²Pursuant 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.

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v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

No. 06-195V

Chief Special Master Golkiewicz

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her minor son, Calvin Kuttner ("Calvin"), petitioner Jessica Kuttner 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 Calvin's receipt of a hepatitis B ("hep B") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table") at 42 U.S.C. § 300aa-14(a)(VIII) and 42 C.F.R. §100.3(a)(VIII).

2. On February 15, 2008, the special master determined that petitioner is entitled to vaccine compensation after finding that Calvin suffered an injury (idiopathic thrombocytopenic purpura, or ITP), and at least six months of residual effects, which were caused in fact by his receipt of a hep B vaccine on June 15, 2004.

3. Respondent continues to maintain his contrary position, but will not seek review of the special master's determination of entitlement upon its memorialization as a reviewable

decision.

4. The parties agree that a decision should be entered awarding the compensation described in paragraph 5 of this Stipulation.

5. 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 lump sum of \$70,000.00 in the form of a check payable to petitioner, as guardian of Calvin's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

6. 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 attorneys' fees and costs incurred in proceeding upon this petition.

7. Payment made pursuant to paragraph 5, and any amounts awarded pursuant to paragraph 6, of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

8. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs referenced in paragraph 6, the money provided pursuant to this Stipulation will be used solely for the benefit of Calvin 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).

9. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian of Calvin's estate under the laws of the State of North Carolina. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian of Calvin's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian of the estate of Calvin Kuttner at the time a payment pursuant to this Stipulation is made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian of the estate of Calvin Kuttner upon submission of written documentation of such appointment to the Secretary.

10. In return for the payment described in paragraph 5, petitioner, in her individual capacity and as legal representative of Calvin, on behalf of herself, Calvin and 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, Calvin resulting from, or alleged to have resulted from, the hep B, inactivated poliovirus, diphtheria-tetanus-acellular pertussis, Comvax and Prevnar vaccinations administered on June 15, 2004, as alleged by petitioner in a petition for vaccine compensation filed on or about March 13, 2006, in the United States Court of Federal Claims as petition No. 06-195V.

11. If Calvin should die prior to the petitioner receiving the payment described in paragraph 5, this agreement shall be considered voidable upon proper notice to the Court on

behalf of either or both of the parties.

12. 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.

13. This Stipulation expresses a full and complete settlement of liability and damages claimed in this matter by petitioner under the National Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 6 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.

14. All rights and obligations of petitioner hereunder shall apply equally to her heirs, successors and/or assigns as legal representatives of Calvin Kutner.

END OF STIPULATION