

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. [Redacted]V

Originally issued: December 16, 2008

Redacted decision issued: December 18, 2008

Not for publication

JANE DOE/26, *

*

*

Petitioner, *

*

v. *

Damages decision based on stipulation;
CIDP following hepatitis B vaccinations

*

*

SECRETARY OF THE DEPARTMENT *

OF HEALTH AND HUMAN SERVICES, *

*

Respondent. *

*

Clifford J. Shoemaker, Vienna, VA, for petitioner.

Lisa A. Watts, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On December 12, 2008, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleged that she suffered from chronic inflammatory demyelinating polyneuropathy (“CIDP”) following her hepatitis B vaccinations. Respondent denies that petitioner’s CIDP was caused in fact by her hepatitis B vaccinations. Nonetheless, the parties agreed to resolve this matter informally.

The court hereby adopts the parties’ said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the

¹ On December 17, 2008, petitioner filed a motion to redact the undersigned’s decision issued on December 16, 2008. The motion is hereby GRANTED and this Decision is being reissued in accordance with petitioner’s request.

court awards:

- (1) a lump sum payment of **\$20,541.79** in the form of a check payable jointly to petitioner and New Mexico Human Services Department, Attention: Ms. Esther Martinez, 2025 S. Pacheco Street, Suite B, Sante Fe, NM 87505, for reimbursement of New Mexico's Medicaid expenses; and
- (2) a lump sum of **\$700,000.00** in the form of a check payable to petitioner. This amount represents compensation for all remaining elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: December 18, 2008

/s/ Laura D. Millman

Laura D. Millman
Special Master

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

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

_____)	
)	
Petitioner,)	<u>ECF</u>
v.)	No. _____ V
)	Special Master
SECRETARY OF HEALTH)	Laura D. Millman
AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

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

1. On July 2, 1999, _____ (“petitioner”), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to petitioner’s receipt of a series of Hepatitis B (“Hep B”) vaccines. Hep B vaccine is covered under the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a)(VIII), as amended.
2. Petitioner received Hep B vaccines on January 2, 1998, January 29, 1998, and July 10, 1998.
3. The vaccines were administered within the United States.
4. Petitioner alleges that two days after receiving her third Hep B vaccine, she experienced the acute onset of weakness of her right hand. Over the next two months, petitioner’s symptoms evolved to include numbness and weakness of her lower extremities. Petitioner was diagnosed with chronic inflammatory demyelinating polyneuropathy (“CIDP”),

which she believes was caused-in-fact by receipt of the Hep B vaccines.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her alleged vaccine-related injury.

6. Respondent denies that petitioner's condition, to include CIDP, was caused by the Hep B vaccines she received.

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 files 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 payment of \$20,541.79 in the form of a check payable jointly to petitioner and New Mexico Human Services Department, Attention: Ms. Esther Martinez, 2025 S. Pacheco Street, Suite B, Sante Fe, NM 87505, for reimbursement of New Mexico's Medicaid expenses; and

b. a lump sum of \$700,000.00 in the form of a check payable to petitioner. This amount represents compensation for all remaining elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

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. 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.

11. The parties and their attorneys further agree and stipulate that, except for any award for reasonable attorney's fees and costs incurred in this proceeding, 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 paragraphs 8 and 9, petitioner in her individual capacity, and on behalf of 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 petitioner resulting from, or alleged to have resulted from, Hep B vaccines administered to her on January 2, 1998, January 29, 1998, and July 10, 1998, as alleged by petitioner in a petition for vaccine compensation filed on or about July 2, 1999, in the United States Court of Federal Claims as petition No. 99-431V.

13. If petitioner should die prior to receiving 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 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.

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 petitioner's successors and assigns.


END OF STIPULATION

Respectfully submitted,

PETITIONER:

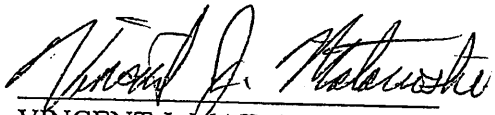
[REDACTED]

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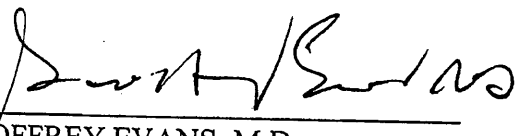
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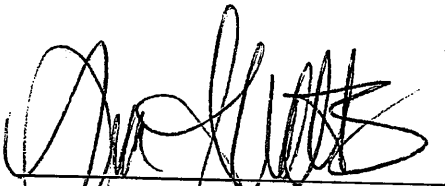
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Dated: 12-12-2008