

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MEREDITH A. BAMBALIS, *

*

Petitioner, *

*

v. *

*

SECRETARY OF HEALTH *

*

AND HUMAN SERVICES, *

*

Respondent. *

*

No. 09-543V
Special Master Christian J. Moran

Filed: August 29, 2012

Stipulation; Varicella vaccine;
multiple sclerosis; Graves disease;
fibromyalgia.

UNPUBLISHED DECISION¹

Anne C. Toale, Maglio Christopher and Toale, Sarasota, FL, for Petitioners;
Traci R. Patton, U.S. Department of Justice, Washington, D.C., for Respondent.

On August 28, 2012, the parties filed a joint stipulation concerning the petition for compensation filed by Meredith A. Bambalis on August 17, 2009. In her petition, she alleged that the Varicella vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which she received on June 23, 2008, caused her to sustain the first symptom or manifestation of onset of multiple sclerosis (“MS”), Graves Disease, and fibromyalgia, the effects of which lasted for more than six months.

Respondent denies that petitioner suffered the onset of MS, Graves Disease, fibromyalgia, or any other conditions as the result of her June 23, 2008 Varicella vaccination and denies that the Varicella vaccine caused her current disabilities.

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$15,000.00, which amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a), except as set forth in paragraphs B. and C., in the form of a check payable to petitioner;**
- B. A lump sum payment of \$23,132.83, which amount represents reimbursement of a State of North Carolina Medicaid lien, in the form of a check payable jointly to petitioner and**

**North Carolina Division of Medical Assistance
Office of the Controller
2022 Mail Service Center
Raleigh, NC 27699-2022
Medicaid ID: 949847262T
Attn: Sounjanette Tailaferro**

- C. An amount neither less nor greater than \$260,000.00 to purchase the annuity contract described in the attached stipulation, paid to the life insurance company from which the annuity will be purchased.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 9-543V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.
IT IS SO ORDERED.

s/Christian J. Moran

Christian J. Moran
Special Master

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MEREDITH A. BAMBALIS,

Petitioner,

v.

**SECRETARY OF HEALTH AND HUMAN
SERVICES,**

Respondent.

**No. 09-543V
Special Master Moran
ECF**

STIPULATION

The parties hereby stipulate to the following matters:

1. Meredith A. Bambalis, 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 Varicella vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).

2. Petitioner received her Varicella immunization on June 23, 2008.

3. The vaccination was administered within the United States.

4. Petitioner alleges that she sustained the first symptom or manifestation of the onset of Multiple Sclerosis ("MS"), Graves Disease, and fibromyalgia within approximately two to three weeks of receipt of the vaccine, and that she experienced the residual effects of these injuries or conditions for more than six months.

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

6. Respondent denies that petitioner suffered the onset of MS, Graves Disease, fibromyalgia, or any other condition as the result of her June 23, 2008, Varicella vaccination and denies that the Varicella vaccine caused her current disabilities.

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 \$15,000.00, which amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a), except as set forth in paragraphs 8.b. and 8.c., in the form of a check payable to petitioner;
- b. A lump sum of \$23,132.83, which amount represents reimbursement of a State of North Carolina Medicaid lien, in the form of a check payable jointly to petitioner and

North Carolina Division of Medical Assistance
Office of the Controller
2022 Mail Service Center
Raleigh, NC 27699-2022
Medicaid ID: 949847262T
Att: Soujanette Taliaferro

- c. An amount neither less nor greater than \$260,000.00 to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

9. The Life Insurance Company must have a minimum of \$250,000,000.00 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of petitioner, Meredith A. Bambalis, pursuant to which the Life Insurance Company will agree to make payments periodically to Meredith A. Bambalis for all remaining damages that would be available under 42 U.S.C. §300aa-15(a), as follows:

- a. Beginning as soon as practicable after the date of judgment, \$1,428.81 per month for 20 years life contingent.

The purchase price of the annuity shall be neither less nor greater than \$260,000.00. In the event that the cost of the annuity payments set forth above varies from \$260,000.00, the monthly payment described in sub-paragraph 10.a. shall be adjusted upward or downward to ensure that the total cost of the annuity is neither less nor greater than \$260,000.00. Written notice to the Secretary of Health and Human Services and to the Life Insurance Company shall be provided within twenty (20) days of Meredith A. Bambalis's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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.

13. 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.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. 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 either immediately or as part of the annuity contract, will be used solely for petitioner's benefit 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).

16. In return for the payments described in paragraphs 8 and 12, petitioner, in her individual capacity, 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. § 300 aa-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 Varicella vaccination administered on June 23, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about August 17, 2009, in the United States Court of Federal Claims as petition No. 09-543V.

17. 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.

18. 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.

19. 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 12 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, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

20. Petitioner hereby authorizes respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

21. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that petitioner suffered the onset of MS, Graves Disease, or fibromyalgia as the result of her Varicella vaccination or that the vaccine caused her to suffer any injury or condition.

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

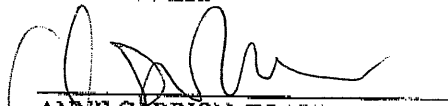
END OF STIPULATION

Respectfully submitted,

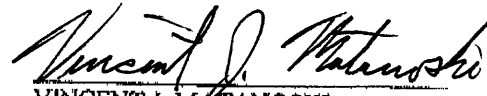
Petitioner:


MEREDITH A. BAMBALIS


ATTORNEY OF RECORD FOR
PETITIONER:


ANNE CARRION TOALE, ESQ.
MAGLIO CHRISTOPHER &
TOALE LAW FIRM
1605 Main Street, Suite 710
Sarasota, FL 34236
(888) 952-5042

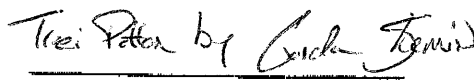
AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:


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

AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:


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

ATTORNEY OF RECORD FOR
RESPONDENT:


TRACI R. PATTON
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 353-1589

Dated: August 28, 2012