

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

WALTER RAY GRAVES and LISA GRAVES	*	No. 02-1211V
as representatives of the estate of	*	Senior Judge James F. Merow
HAYLEY NICOLE GRAVES, deceased,	*	Special Master Christian J. Moran
	*	
Petitioners,	*	Filed: August 3, 2012
	*	
v.	*	
	*	damages, death case.
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

Richard Gage, Esq., Richard Gage, P.C., Cheyenne, WY., for Petitioners;
Lisa A. Watts, Esq., United States Department of Justice, Washington, D.C., for Respondent.

PUBLISHED REMAND DECISION AWARDING COMPENSATION*

The Court of Federal Claims found that Walter Ray Graves and Lisa Graves, representatives of the estate of their daughter, Hayley, established that Prevnar, a pneumococcal vaccine, caused Hayley’s death. The Court remanded the case for a determination of damages.

Opinion and Order, 101 Fed. Cl. 310 (2011). A reasonable amount of compensation is \$315,171.50.

This amount is the total of three components. The first part is \$250,000, which 42 U.S.C. § 300aa–15(a)(2), awards to the estate of a person who suffers a “vaccine-related death.” In

* 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.

Zatuchni v. Sec’y of Health & Human Servs., 516 F.3d 1312, 1318 (Fed. Cir. 2008), the Federal Circuit held that estates are not limited to awards of only \$250,000. The remaining two portions of the award to the Graveses are based on Zatuchni’s interpretation of section 15(a).

For the unreimbursed expenses that the Graveses incurred for Hayley’s care between her vaccination and untimely death, the Graveses seek an award of \$5,171.50. Pet’r Status Rep’t, filed July 12, 2012. Zatuchni supports an award for these expenses, and in a July 30, 2012 status conference, the Secretary represented that she did not contest any items. Consequently, \$5,171.50 is the second component of the compensation awarded.

The third element concerns an award for the emotional distress that Hayley suffered. The parties extensively disputed this issue. Initially, the parties argued whether the Graveses were legally entitled to any amount. A January 27, 2012 ruling on a motion for summary judgment resolved this issue in the Graveses’ favor. Thereafter, the parties disputed the amount of compensation for Hayley’s emotional distress. An April 17, 2012 ruling found that in the Vaccine Program, a reasonable award was \$60,000. 2012 WL 1611578.¹

In sum, the Graveses are entitled to compensation in the amount of \$315,171.50. Needless to say, this amount cannot truly compensate the Graveses for their loss. Yet, the legal system can offer only money.

This decision constitutes a final decision awarding the Graveses compensation. See 42 U.S.C. § 300aa–12(d)(3)(A) (directing special masters to “issue a decision . . . with respect to . . . the amount of such compensation”); see also Currie v. Sec’y of Health & Human Servs., No.

¹ On May 17, 2012, the Graveses filed a motion for review, challenging the amount awarded in pain and suffering. On July 3, 2012, the Court stayed adjudication of this motion until there is a final decision awarding compensation.

02-838V, 2003 WL 23218074 (Fed. Cl. Spec. Mstr. Nov. 26, 2003) (discussing what constitutes a “decision”). Given the May 17, 2012 motion for review and the Court’s July 3, 2012 order staying adjudication of that motion, it appears that the Clerk’s Office should not enter judgment until after the Court addresses the Graveses’ motion for review.² The parties may wish to seek guidance from the Court regarding any schedule for submissions to it. Pursuant to Vaccine Rule 28.1(a), the Clerk’s Office is instructed to deliver a copy of this decision to the assigned judge.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

² The Secretary, too, may wish to seek review of the January 27, 2012 ruling on a motion for summary judgment. See Resp’t Memorandum in Response to Pet’r Motion for Review, filed June 11, 2012, at 8-9.