

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

No. 09-653V

Filed: November 15, 2013

(Not for Publication)

██████████, as Personal Representative of the Estate of

██████████,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

Damages Decision on Proffer; GBS; Influenza Vaccine; Death

Franklin John Caldwell, Jr., Esq., Sarasota, FL, for petitioner.
Glenn MacLeod, Esq., U.S. Dept. of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Vowell, Chief Special Master:

On October 2, 2009, ██████████,² as Personal Representative of the Estate of ██████████, filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.*³ [the “Vaccine Act” or “Program”] alleging that ██████████ died on November 20, 2008, from Guillain-Barré Syndrome [GBS] caused by the flu vaccine she received on September 25, 2008. On May 31, 2013, Special Master Daria Zane issued a decision finding petitioner entitled to compensation, concluding that petitioner established by preponderant evidence that the flu vaccine was a substantial factor in causing ██████████ GBS and death.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

² This case was recaptioned on November 14, 2013, to reflect the recent order of the Orphan Court for Montgomery County, Maryland, which changed the Personal Representative of the Estate.

³ National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

On November 15, 2013, respondent filed her Proffer on Award of Compensation. Pursuant to the terms stated in the attached Proffer, I award petitioner:

1. A lump sum payment of \$250,000.00, representing compensation for the death of [REDACTED] pursuant to 42 U.S.C. § 300aa-15(a)(2), made payable to [REDACTED], as Personal Representative of the Estate of [REDACTED].
2. A lump sum payment of \$150,000.00, which amount represents compensation for all other damages available under 42 U.S.C. § 300aa-15(a)(2), payable to [REDACTED], as Personal Representative of the Estate of [REDACTED].
3. Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as Legal Representative or conservator of [REDACTED] estate under the laws of the State of Maryland. **No payments pursuant to this Proffer shall be made until petitioner provides the Secretary with documentation establishing his appointment as Legal Representative or conservator of [REDACTED] estate.** If petitioner is not authorized by a court of competent jurisdiction to serve as Legal Representative or conservator of the estate of [REDACTED] at the time a payment pursuant to this Proffer is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as Legal Representative(s) or conservator(s) of the estate of [REDACTED] upon submission of written documentation of such appointment to the Secretary.

These amounts represent compensation for all damages that would be available under § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Denise K. Vowell
Denise K. Vowell
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

Respondent hereby submits the following proffer regarding the award of compensation.

I. Items of Compensation

A. Future Medical Care Expenses

As this is a death case, petitioner is not entitled to an award for projected unreimbursable medical care expenses incurred from the date of judgment as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(1)(A). Petitioner agrees.

B. Lost Future Earnings

Based upon the evidence of record, respondent proffers that petitioner, as Personal Representative of the Estate of [REDACTED], is not entitled to an award for lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(B). Petitioner agrees.

C. Pain and Suffering

Respondent proffers that petitioner, as Personal Representative of the Estate of [REDACTED], should be awarded \$150,000.00 for [REDACTED] actual pain and suffering as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

D. Past Unreimbursable Expenses

Based upon the evidence of record, respondent proffers that petitioner, as Personal Representative of the Estate of [REDACTED], is not entitled to an award of past unreimbursable expenses stemming from [REDACTED] vaccine-related injury, as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no outstanding Medicaid liens related to [REDACTED] vaccine-related injury or death.

II. Form of the Award

The parties recommend that the compensation provided to [REDACTED], as Personal Representative of the Estate of [REDACTED], should be made through lump sum payments and request that the special master's decision and the Court's judgment award the following:

A. A lump sum payment of \$250,000.00, representing compensation for the death of [REDACTED] pursuant to 42 U.S.C. § 300aa-15(a)(2), made payable to [REDACTED], as Personal Representative of the Estate of [REDACTED]; and

B. A lump sum payment of \$150,000.00, which amount represents compensation for all other damages available under 42 U.S.C. § 300aa-15(a), payable to [REDACTED] as Personal Representative of the Estate of [REDACTED].

Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as Legal Representative or conservator of [REDACTED] estate under the laws of the State of Maryland. No payments pursuant to this Proffer shall be made until petitioner provides the Secretary with documentation establishing his appointment as Legal Representative or conservator of [REDACTED] estate. If petitioner is not authorized by a court of competent jurisdiction to serve as Legal Representative or conservator of the estate of [REDACTED] at the time a payment pursuant to this Proffer is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as Legal Representative(s) or conservator(s) of the estate of [REDACTED] upon submission of written documentation of such appointment to the Secretary.

III. Summary of Recommended Payments Following Judgment

A. Lump sum paid to petitioner [REDACTED], as Personal Representative of the Estate of [REDACTED]: \$ 250,000.00

B.	Lump sum paid to petitioner [REDACTED], as Personal Representative of the Estate of [REDACTED]:	\$ <u>150,000.00</u>
	TOTAL AWARD:	\$ 400,000.00

Respectfully submitted,

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DATE: November 15, 2013