

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

No. 10-687V

Filed: October 9, 2012

████████████████████

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,
Respondent.

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Stipulation; Influenza; AIDP; Acute
inflammatory polyradiculopathy; GBS

DECISION ON JOINT STIPULATION¹

Vowell, Special Master:

████████████████████ [“Petitioner”] filed a petition for compensation under the National Vaccine Injury Compensation Program² on October 13, 2010. Petitioner alleges that she developed acute inflammatory polyradiculopathy as a result of an influenza vaccination she received in October 2009. She further alleges that she experienced residual effects of this injury for more than six months. See Stipulation, filed October 9, 2011, at ¶¶ 2, 4.

Respondent denies that petitioner’s influenza vaccine caused her alleged acute inflammatory polyradiculopathy or any other injury. Stipulation at ¶ 6. Nevertheless, the parties have agreed to settle the case. On October 9, 2012, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims’ website, in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, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information, that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² 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).

Respondent agrees to pay petitioner \$166,959.70 as follows:

- A lump sum payment of **\$66,959.72**³ in the form of a check jointly payable to petitioner and Ingenix Subrogation Services, Attn: Case No. 15590480, 75 Remittance Drive Suite 6019, Chicago, IL 60675-6019, and
- A lump sum payment of **\$100,000.00**⁴ in the form of a check payable to petitioner.

The special master adopts the parties' stipulation attached hereto, and awards compensation in the amount and on the terms set forth therein. 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.⁵

IT IS SO ORDERED.

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

³ This amount represents reimbursement of a State of Minnesota Medicaid lien.

⁴ This amount represents all remaining compensation for damages that would be available under § 300aa-15(a).

⁵ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

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SECRETARY OF HEALTH AND
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Respondent

No. 10-687V
Special Master Denise K. Vowell
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. ██████████ ("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 trivalent influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).

2. Petitioner received a flu vaccine on or about October 20, 2009.¹

3. The vaccine was administered within the United States.

4. Petitioner alleges that the flu vaccine caused her to develop an acute inflammatory polyradiculopathy and that she experienced residual effects of this injury for more than six months.

¹ Petitioner alleges that she received a flu vaccine on October, 15, 2009. Petition at 1. However, the record reflects October 20, 2009, as the date of vaccine administration. Petitioner's Exhibit 7 at 9. This stipulation refers to the flu vaccine alleged by petitioner to have caused her condition, regardless of whether that vaccination was administered on or about October 15, 2009, or on or about October 20, 2009.

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

6. Respondent denies that the flu immunization is the cause of petitioner's alleged acute inflammatory polyradiculopathy and/or any other injury.

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 \$66,959.72, which amount represents reimbursement of a State of Minnesota Medicaid lien, in the form of a check payable jointly to petitioner and

Ingenix Subrogation Services
Attn: Case No. 15590480
75 Remittance Drive
Suite 6019
Chicago, IL 60675-6019.

Petitioner agrees to endorse this payment to the State; and

- b. A lump sum of \$100,000.00 in the form of a check payable to petitioner. This amount represents all remaining compensation for damages that would be available under 42 U.S.C. § 300aa-15(a).

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

10. 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.

11. 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.

12. 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 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).

13. 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 and/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. § 300aa-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 flu vaccination administered on or

about October 20, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about October 13, 2010, in the United States Court of Federal Claims as petition No. 10-687V.

14. 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.

15. 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.

16. 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 9 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.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused petitioner's alleged acute inflammatory polyradiculopathy, and/or any other injury.

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

END OF STIPULATION


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Respectfully submitted,

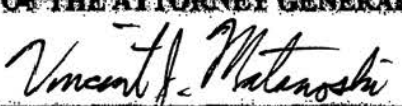
PETITIONER:




ATTORNEY OF RECORD FOR
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DATED: October 9, 2012