

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 12-916V

(Filed: May 2, 2014)

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|-------------------------------|---|---------------------|
| LILO HAMPER, |) | UNPUBLISHED |
| |) | |
| Petitioner, |) | Stipulation; |
| |) | Tetanus-diphtheria- |
| v. |) | acellular pertussis |
| |) | (Tdap); Guillain- |
| |) | Barré Syndrome |
| SECRETARY OF THE DEPARTMENT |) | |
| OF HEALTH AND HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |
| |) | |

UNPUBLISHED DECISION¹

On May 2, 2014, Respondent filed a joint stipulation concerning the petition for compensation filed by Lilo Hamper on December 28, 2012. In her petition, Petitioner alleged that the tetanus-diphtheria-acellular pertussis (Tdap) vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which she received on December 22, 2011, caused her to develop Guillain-Barré Syndrome (GBS). Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf as a result of Ms. Hamper’s alleged vaccine-related injury. Stipulation at ¶¶ 2, 4, 5.

¹ Because this unpublished decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this order on the United States Court of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)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” order will be available to the public. *Id.*

Respondent denies that the Tdap vaccine caused Ms. Hamper to suffer GBS or any other injury. 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 lump sum payment of \$135,000.00 in the form of a check payable to Petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

Stipulation at ¶8.

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 12-916V according to this decision and the attached stipulation.²

Any questions may be directed to my law clerk, Camille Collett, at (202) 357-6361.

IT IS SO ORDERED.

s/Lisa Hamilton Fieldman
Lisa Hamilton-Fieldman
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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 a lump sum payment of \$135,000.00 in the form of a check payable to petitioner. This payment represents compensation for all 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 compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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 by 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, 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 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 Tdap vaccination administered on December 22, 2011, as alleged by petitioner in a petition for vaccine compensation filed on or about December 28, 2012, in the United States Court of Federal Claims as petition No. 12-916V.

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.

Respectfully submitted,

PETITIONER:

Lilo Hamper
LILO HAMPER

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Dated: May 2, 2014