

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-1094V

Filed: August 5, 2016

UNPUBLISHED

JASMINE MORGAN (Parent), *
On behalf of the Estate of *
C.S. (deceased, minor), *

Petitioner, *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Damages based on proffer;
Diphtheria, tetanus and acellular
Pertussis (“DtaP”); Encephalopathy;
Death; Table Injury
Special Processing Unit (“SPU”)

Rabiah Abdullah, Rich Law Firm, P.C., Washington, D.C., for petitioner.
Michael Patrick Milmo, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On November 10, 2014, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that C.S. died of acute cerebral edema and brain herniation as a result of receiving, *inter alia*, a DtaP vaccine. Petition at 1. Petitioner alleged C.S.’s injury and death were either caused in fact by his vaccinations or constituted an injury contained within the Vaccine Injury Table. *Id* at 6. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 9, 2015, a ruling on entitlement was issued, finding petitioner entitled to compensation for an on-Table Encephalopathy. On August 5, 2016, respondent filed a

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact 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 (2012).

proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$375, 332.22, including \$25,302.25 for reimbursement of a Commonwealth of Virginia Medicaid lien. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner:**

- **A lump sum of \$25,302.25, which amount represents reimbursement of a Commonwealth of Virginia Medicaid lien, in the form of a check payable jointly to petitioner and**

**Department of Medical Assistance Services
Accounts Receivable 8th Floor
600 E. Broad Street
Richmond, VA 23219³**

- **A lump sum payment of \$350,029.97 in the form of a check payable to petitioner as the legal representative of the estate of C.S.**

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

The clerk of the court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Petitioner agrees to endorse this check to the appropriate State agency. (Proffer at 2.)

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

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

JASMINE MORGAN (parent), on behalf)	
of the Estate of C.S., (minor, deceased),)	<u>ECF</u>
)	
Petitioner,)	No. 14-1094V
)	Chief Special Master
v.)	Nora Beth Dorsey
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items

On June 9, 2015, former Chief Special Master Denise K. Vowell issued a Ruling on Entitlement determining that petitioner was entitled to vaccine compensation for the death of her son, C.S., following his receipt of multiple vaccinations on November 16, 2012. Based upon the evidence of record, respondent proffers that petitioner should be awarded \$375,332.22, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through the following lump sum payments:

- a) a lump sum of \$25,302.25, which amount represents reimbursement of a Commonwealth of Virginia Medicaid lien, in the form of a check payable jointly to petitioner, and

Department of Medical Assistance Services
Accounts Receivable 8th Floor
600 E. Broad Street
Richmond, VA 23219

Petitioner agrees to endorse this check to the appropriate State agency.

- b) a lump sum payment of \$350,029.97, in the form of a check payable to petitioner as the legal representative of the estate of C.S.

Petitioner agrees. These amounts account for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

No payments shall be made until petitioner provides respondent with documentation that she has been appointed as the legal representative of C.S.'s estate.

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Acting Deputy Director
Torts Branch, Civil Division

VORIS E. JOHNSON
Senior Trial Attorney
Torts Branch, Civil Division

/s/Michael P. Milmoe
MICHAEL P. MILMOE
Senior Trial Counsel
Torts Branch, Civil Division
U. S. Department of Justice
P.O. Box 146, Benjamin Franklin Station
Washington, D.C. 20044-0146
Direct dial: (202) 616-4125
Fax: (202) 616-4310

Dated: August 5, 2016