

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-181V

Filed: November 13, 2015

UNPUBLISHED

E.T., a minor, by his parents *
FRANCISCO and LUZ TAMEZ, *

Petitioner, *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Joint Stipulation on Damages;
Influenza;
Guillain-Barre Syndrome (“GBS”);
Special Processing Unit (“SPU”)

Michael McLaren, Black McLaren, et al, PC, Memphis, TN, for petitioner.
Claudia Barnes Gangi, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON JOINT STIPULATION¹

Dorsey, Chief Special Master:

On February 26, 2015, petitioners filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² [the “Vaccine Act”]. Petitioners allege that their son suffered Guillain-Barre Syndrome (“GBS”) as a consequence of his December 4, 2013 influenza vaccination. Petition at 1-3; Stipulation, filed 11/13/2015, ¶ 4. Petitioner further alleges he received the vaccination within the United States, that the residual effects of his injury lasted for more than six months, and that there has been no prior award or settlement of a civil action for damages resulting from this condition. Petition at 4; Stipulation¶¶ 3-5. “Respondent denies that the flu vaccine caused ET’s GBS or any other injury or his current condition.” Stipulation, ¶ 6.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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, 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), 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).

Nevertheless, on November 13, 2015, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

The parties stipulated that petitioner shall receive the following compensation:

- **A lump sum of \$4,700.00 in the form of a check payable to petitioners, representing compensation for ET's past unreimbursed vaccine-related medical expenses; and**
- **A lump sum of \$105,300.00 in the form of a check payable to petitioners, as guardians/conservators of ET's estate, representing compensation for all other damages that would be available under 42 § 300aa-15(a).**

Stipulation, ¶ 8. These amounts represent compensation for all items of damages that would be available under 42 U.S.C. § 300aa-15(a). *Id.*

The undersigned approves the requested amount for petitioner's compensation. 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.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ 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.

6. Respondent denies that the flu vaccine caused ET's GBS or any other injury or his current condition.

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 petitioners have 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 \$4,700.00 in the form of a check payable to petitioners, representing compensation for ET's past unreimbursed vaccine-related medical expenses; and

b. A lump sum of \$105,300.00 in the form of a check payable to petitioners, as guardians/conservators of ET's estate, representing compensation for all other 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 petitioners have 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. Petitioners and their 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 prepaid basis.

11. Payments made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 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 unreimbursed expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of ET 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. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of ET's estate under the laws of the State of New Mexico. No payments pursuant to paragraph 8(b) of this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of ET's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of ET at the time a payment pursuant to paragraph 8(b) of this Stipulation 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 guardian/conservator of the estate of ET upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacity, and on behalf of ET and ET's heirs, executors, administrators, successors, and assigns, do 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 United States 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 ET resulting from, or alleged to have resulted from, the flu vaccination administered on or about December 4, 2013, as alleged by petitioners in a petition for vaccine compensation filed on or about February 26, 2015, in the United States Court of Federal Claims as petition No. 15-181V.

15. If ET 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.

16. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the United States 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.

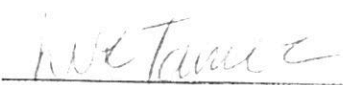
17. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or 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.

Respectfully submitted,

PETITIONERS:



FRANCISCO TAMEZ, legal representative of ET



LUZ TAMEZ, legal representative of ET

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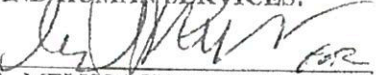
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