

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: June 8, 2017

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MICHAEL FERG as personal
representative of the Estate of Sarah
Morcos,

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No. 16-1285V

Petitioner,

*

Special Master Sanders

v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Joint Stipulation on Damages; Influenza
("Flu") Vaccine; Transverse Myelitis
("TM"); Death.

Respondent.

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John R. Howie, Jr., Howie Law, PC, Dallas, TX, for Petitioner.

Heather L. Pearlman, United States Department of Justice, Washington, DC, for Respondent.

DECISION¹

On October 6, 2016, Michael Ferg ("Petitioner"), on behalf of the estate of Sarah Morcos, petitioned for compensation pursuant to the National Vaccine Injury Compensation Program.² 42 U.S.C. §§ 300aa-10 to -34 (2012). Petitioner alleged that, as a result of an influenza ("flu") vaccine administered on October 11, 2013, Ms. Morcos developed transverse myelitis ("TM") and subsequently died due to her alleged vaccine-related injury. Stipulation, ECF No. 31.

On June 8, 2017, the parties filed a stipulation in which they state that a decision should be entered awarding compensation to Petitioner. *Id.* Respondent denies that the influenza vaccine caused Ms. Morcos to develop TM or any other injury, and further denies that the

¹ This decision shall be posted 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), a party has 14 days to identify and move to delete medical or other information that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, the undersigned agrees that the identified material fits within the requirements of that provision, such material will be deleted from public access.

² The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 et seq. (hereinafter "Vaccine Act," "the Act," or "the Program"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

vaccine caused her death. *Id.* at 2. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. 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 stipulate that Petitioner shall receive the following compensation:

[A] lump sum payment of \$300,000.00, in the form of a check payable to petitioner as conservator/legal representative of Sarah Morcos' estate. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

Id. at ¶ 8.

The undersigned approves the requested amount for Petitioner's compensation. Accordingly, an award should be made consistent with the stipulation.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

s/Herbrina D. Sanders
Herbrina D. Sanders
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Sarah Morcos as a result of her alleged injury or her death.

6. Respondent denies that the influenza immunization caused Sarah Morcos' alleged TM or any other injury, and denies that the influenza immunization caused her death.

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 \$300,000.00 in the form of a check payable to petitioner as conservator/legal representative of Sarah Morcos' estate. This amount 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. Payment 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.

11. Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as conservator/legal representative of Sarah Morcos' estate under the laws of the State of South Carolina. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as conservator/legal representative of Sarah Morcos' estate. If petitioner is not authorized by a court of competent jurisdiction to serve as conservator/legal representative of the estate of Sarah Morcos at the time a payment pursuant to 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 conservator/legal representative of the estate of Sarah Morcos upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity and as legal representative of the estate of Sarah Morcos, on behalf of himself, and on behalf of Sarah Morcos' 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 Sarah Morcos resulting from, or alleged to have resulted from, the influenza vaccination administered on October 11, 2013, as alleged by petitioner in a petition for vaccine compensation filed on or

about October 6, 2016, in the United States Court of Federal Claims as petition No. 16-1285V.

13. 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.

14. 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.

15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the influenza vaccine caused Sarah Morcos' alleged TM or any other injury or her death.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representative of the estate of Sarah Morcos.

END OF STIPULATION


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Respectfully submitted,


PETITIONER:


MICHAEL FERG

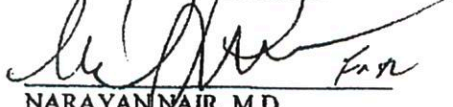
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Dated: June 8, 2017