

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: April 26, 2022

MARIAN J. ZIELINSKI and MATHEW E. * Unpublished
ZIELINSKI, legal representatives and parents *
Of a minor child, E.E.Z. *
Petitioner, * 18-1075V
v. * Special Master Gowen
SECRETARY OF HEALTH * Decision on Stipulation;
AND HUMAN SERVICES, * Measles, mumps, and rubella
Respondent. * ("MMR"); Varicella; Juvenile
Dermatomyositis ("JDM").

Richard H. Moeller, Moore, Heffernan, et al., Sioux City, IA, for petitioner.
Emilie Williams, U.S. Department of Justice, Washington, D.C., for respondent.

DECISION ON STIPULATION1

On July 24, 2018, Marian J. Zielinski and Mathew E. Zielinski, as legal representatives, and parents of minor child, E.E.Z., ("petitioners"), filed a petition in the National Vaccine Injury Compensation Program.2 Petition (ECF No. 1). Petitioners alleged that as a result of E.E.Z. receiving the measles, mumps, and rubella ("MMR") and varicella vaccinations on August 29, 2017, suffered from juvenile dermatomyositis ("JDM"). Id. at Preamble.

On April 26, 2022, respondent filed a stipulation providing that a decision should be entered awarding compensation to petition. Stipulation (ECF No. 70). Respondent denies that E.E.Z.'s alleged injury was caused by the MMR and varicella vaccines. Id. at ¶ 6. Maintaining their respective positions, the parties nevertheless now agree that the issues between them shall

1 Pursuant to the E-Government Act of 2002, see 44 U.S.C. § 3501 note (2012), because this opinion contains a reasoned explanation for the action in this case, I am required to post it on the website of the United States Court of Federal Claims. The court's website is at http://www.uscfc.uscourts.gov/aggregator/sources/7. This means the opinion will be available to anyone with access to the Internet. Before the opinion is posted on the court's website, each party has 14 days to file a motion requesting 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). "An objecting party must provide the court with a proposed redacted version of the decision." Id. If neither party files a motion for redaction within 14 days, the opinion will be posted on the court's website without any changes. Id.

2 The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

be settled and that a decision should be entered awarding compensation to petitioner according to the terms of the stipulation attached hereto as Appendix A. *Id.* at ¶ 7.

The stipulation awards:

- 1) **A lump sum of \$237,655.90, in the form of a check payable to petitioners as guardians/conservators of E.E.Z.'s estate; and,**
- 2) **A lump sum of \$12,344.10, which amount represents compensation for unreimbursable expenses, in the form of a check payable to petitioners, Marian J. and Mathew E. Zielinski.**

These amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

I adopt the parties' stipulation attached hereto, and award compensation in the amount and on the terms set forth therein. The Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

s/Thomas L. Gowen
Thomas L. Gowen
Special Master

³ Entry of judgment is expediated by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).

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

MARIAN J. ZIELINSKI and MATHEW E.
ZIELINSKI, as legal representatives and
parents of a minor child, E.E.Z.,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 18-1075V
Special Master Gowen
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Marian J. Zielinski and Mathew E. Zielinski (“petitioners”), on behalf of E.E.Z., a minor, 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 an injury allegedly related to E.E.Z.’s receipt of a measles/mumps/rubella (“MMR”) vaccine and a varicella vaccine, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. E.E.Z. received the MMR and varicella vaccines on August 29, 2017.
3. The vaccinations were administered in the United States.
4. Petitioners allege that the MMR and varicella vaccines caused E.E.Z.’s alleged juvenile dermatomyositis (“JDM”). Petitioners further allege that E.E.Z. has suffered the residual effects of this condition for more than six months.
5. Petitioners represents that there has been no prior award or settlement of a civil

action for damages as a result of E.E.Z.'s alleged condition.

6. Respondent denies that the MMR and varicella vaccines caused E.E.Z.'s alleged JDM, or any other injury or her 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 \$237,655.90, in the form of a check payable to petitioners as guardians/conservators of E.E.Z.'s estate; and,
- b. A lump sum of \$12,344.10, which amounts represents compensation for unreimbursable expenses, in the form of a check payable to petitioners, Marian J. and Mathew E. Zielinski.

These amounts represent 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 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. 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 pre-paid basis.

10. Payments made pursuant to paragraph 8 of this Stipulation, and any amount awarded pursuant to paragraph 12, will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. 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 E.E.Z. 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).

12. 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 E.E.Z.'s estate under the laws of the state of Illinois. No payments pursuant to this Stipulation shall be made until petitioners have provided the Secretary with documentation establishing their appointment as legal representatives of E.E.Z.'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as the representatives of the estate of E.E.Z. 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 legal representative of the estate of E.E.Z. upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 12, petitioners, in their individual capacity and as legal representatives of E.E.Z., on petitioners' own behalf, and on behalf of E.E.Z. and E.E.Z.'s heirs, executors, administrators, successors, or 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 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 E.E.Z. resulting from, or alleged to have resulted from the MMR and/or varicella vaccines administered on August 29, 2017, as alleged in a Petition filed on July 24, 2018, in the United States Court of Federal Claims as petition No. 18-1075V.

14. If E.E.Z. 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 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.

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 12 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.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the MMR and/or varicella vaccines caused E.E.Z.'s

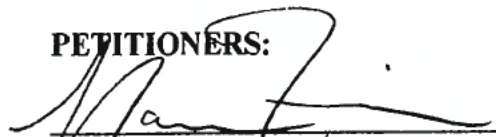
alleged JDM, or any other injury, or that E.E.Z. sustained a Table injury.

18. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of E.E.Z.

END OF STIPULATION

Respectfully submitted,

PETITIONERS:



MARIAN J. ZIELINSKI



MATHEW E. ZIELINSKI

**ATTORNEY OF RECORD
FOR PETITIONERS:**



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