

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1272V

UNPUBLISHED

SHERRIE SANDOVAL, Personal
Representative of the Estate of
ROBERT SANDOVAL, Deceased,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 25, 2020

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

Bridget Candace McCullough, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Traci R. Patton, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON JOINT STIPULATION¹

On August 22, 2018, Sherrie Sandoval as Personal Representative of the estate of Robert Sandoval, 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 the decedent, Robert Sandoval, suffered Guillain-Barre Syndrome (GBS) resulting from the adverse effects of a September 26, 2016 influenza (flu) vaccination, which subsequently caused his death. Petition at 1; Stipulation, filed February 24, 2020, at ¶¶ 2, 4. Petitioner further alleges the decedent received the flu vaccine in the United States, and that there has been no prior award or settlement of a civil action for damages on behalf of the decedent as a result of his condition and/or his death. Petition at 1, 5-6; Stipulation at ¶¶ 3, 5. “Respondent denies that the flu vaccine caused the decedent’s alleged GBS, any other injury, or his death.” Stipulation at ¶ 6.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in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). **This means the decision will be available to anyone with access to the internet.** 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, I agree that the identified material fits within this definition, I 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 February 24, 2020, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. I find the stipulation reasonable and adopt it as my decision awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **I award** the following compensation:

A lump sum of \$2,198.72, which amount represents reimbursement of a Medicaid lien for services rendered on behalf of the decedent, in the form of a check payable jointly to Petitioner and the New Mexico Human Services Department. Stipulation at ¶ 8a.

A lump sum of \$275,000.00 in the form of a check payable to Petitioner. Stipulation at ¶ 8b. This amount represents compensation for all items of damages that would be available under § 15(a). *Id.*

I approve 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/Brian H. Corcoran
Brian H. Corcoran
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 Mr. Sandoval's alleged GBS, any other injury, or his 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), respondent will issue the following vaccine compensation payments:

- a. A lump sum of \$2,198.72, which amount represents reimbursement of a Medicaid lien for services rendered on behalf of Mr. Sandoval, in the form of a check payable jointly to petitioner and

New Mexico Human Services Department
P.O. Box 165596
Irving, TX 75017-5596
Re: Medicaid ID# 00003068596019 (Robert Sandoval)
Case File # 112339

Petitioner agrees to endorse this payment to the New Mexico Human Services Department.

- b. A lump sum of \$275,000.00 in the form of a check payable to petitioner as Legal Representative of the Estate of Robert Sandoval. This amount represents compensation for all remaining 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 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.

11. Payments made pursuant to paragraph 8 of this Stipulation, and any amount 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the legal representative of the Estate of Mr. Sandoval under the laws of the State of New Mexico. No payment pursuant to this Stipulation shall be made until petitioner provides respondent with documentation establishing her appointment as legal representative of the Estate of Mr. Sandoval. If petitioner is not authorized by a court of competent jurisdiction to serve as the legal representative of the Estate of Mr. Sandoval 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 the legal representative of the Estate of Mr. Sandoval upon submission of written documentation of such appointment to respondent.

13. In return for the payments described in paragraph 8, and any amount awarded pursuant to paragraph 9, petitioner, in her individual capacity and as the legal representative of the Estate of Mr. Sandoval, on her own behalf, and on behalf of the Estate of Mr. Sandoval, and Mr. Sandoval's heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and respondent 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 Mr. Sandoval resulting from, or alleged to have resulted from, the flu vaccination administered on or about September 26, 2016, as alleged by petitioner in a petition for vaccine compensation filed on or about August 22, 2018, in the United States Court of Federal Claims as petition No. 18-1272V.

14. 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.

15. 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 or amount of damages, and further, that a change in the items of compensation sought is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or respondent that the influenza vaccination caused Mr. Sandoval's alleged GBS or any other injury or his death.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of the Estate of Mr. Sandoval.

END OF STIPULATION

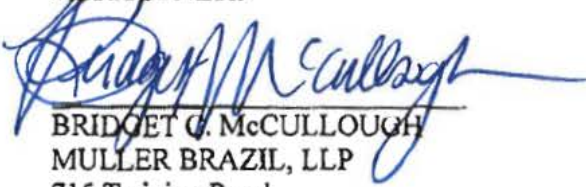
Respectfully submitted,

PETITIONER:



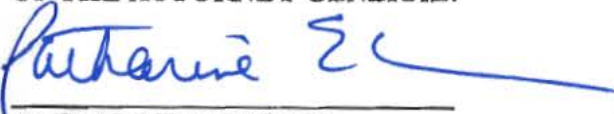
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Dated: February 24, 2020