

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: May 18, 2021

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SUSAN B. ACON, *
as executrix of the estate of *
AGNES BIAGINI, *

Petitioner, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

* * * * *

UNPUBLISHED

No. 19-64V

Special Master Gowen

Stipulation; Influenza (Flu);
Guillain-Barré syndrome (GBS);
Death.

Rudolph L. Massa, Massa Law Group, PC, Pittsburgh, PA, for petitioner.

James V. Lopez, United States Department of Justice, Washington, DC, for respondent.

DECISION ON STIPULATION¹

On January 15, 2019, Susan B. Acon (“petitioner”) as executrix of the estate of Agnes Biagini, filed a petition for compensation in the National Vaccine Injury Compensation Program.² Petition (ECF No. 1). The petition seeks compensation for injuries and death allegedly related to Ms. Biagini’s receipt of an influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), on December 7, 2016.

Petitioner alleges that as a result of receiving the flu vaccine, Ms. Biagini suffered Guillain-Barré syndrome (“GBS”) and that her death on January 15, 2017, was a sequela of the alleged vaccine-related injury.

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 intend 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>. 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 opinion. *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-10 to 34 (2012) (hereinafter “Vaccine Act” or “the Act”). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

On May 18, 2021, respondent filed a stipulation which provides that a decision should be entered awarding compensation to petitioner on behalf of Ms. Biagini's estate. Stipulation (ECF No. 45). Respondent denies that Ms. Biagini sustained a Table GBS injury and further denies that the flu vaccine caused Ms. Biagini's alleged GBS, any other injury, or her death. *Id.* at ¶ 6.

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 the stipulation, which is attached hereto as Appendix A. *Id.* at ¶ 7.

The stipulation awards a lump sum of \$240,000.00 in the form of a check payable to petitioner as legal representative of the estate of Agnes Biagini. This lump sum represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

I adopt the stipulation as the decision of the Court and hereby award compensation in the amount and on the terms set forth therein. Accordingly, the Clerk of 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 expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).

6. Respondent denies that Ms. Biagini sustained a GBS Table injury, and further denies that the flu vaccine caused Ms. Biagini's alleged GBS, any other injury, or 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 the following vaccine compensation payment:

A lump sum of \$240,000.00 in the form of a check payable to petitioner as legal representative of the estate of Agnes Biagini. 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. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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 by 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 legal representative of the estate of Agnes Biagini under the laws of the Commonwealth of Pennsylvania. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as legal representative of the estate of Agnes Biagini. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of Agnes Biagini 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 Agnes Biagini upon submission of written documentation of such appointment to the Secretary.

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 executrix of the estate of Agnes Biagini, on her own behalf, and on behalf of the estate and Ms. Biagini's 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. § 300 aa-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 Ms. Biagini resulting from, or alleged to have resulted from, the flu vaccine administered on December 7, 2016, as alleged in a Petition filed on January 15, 2019, in the United States Court of Federal Claims as petition No. 19-64V.

14. 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.

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 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused Ms. Biagini's alleged GBS, any other injury, or her death.

17. All rights and obligations of petitioner in her capacity as legal representative of the estate of Agnes Biagini shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

Respectfully submitted.

PETITIONER:

Susan B. Acon
SUSAN B. ACON, as executrix of the estate
of AGNES BIAGINI, deceased

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