

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 19-1510V
(not to be published)

JOANNE DAMON, as personal
representative of the estate of LEO DAMON,
JR.,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Filed: April 4, 2023

Decision by Stipulation; Damages;
Influenza (“Flu”) Vaccine; Tetanus
Diphtheria, and Acellular Pertussis
 (“Tdap”) Vaccine; Pneumococcal
 (“Pevnar”) Vaccine; Neuromyelitis
Optica Spectrum Disorder (“NMO”).

Jessica Olins, Maglio, Christopher & Toale, Seattle, WA, for Petitioner
Mary Holmes, U.S. Department of Justice, Washington, DC, for Respondent

DECISION ON JOINT STIPULATION¹

On September 30, 2019, Leo Damon Jr. (then Petitioner) filed a petition, seeking compensation under the National Vaccine Injury Compensation Program (“the Vaccine Program”).² Pet., ECF No. 1. Petitioner alleges he suffered from neuromyelitis optica spectrum disorder (“NMO”) as a result of the influenza (“flu”), tetanus, diphtheria, and acellular pertussis (“Tdap”), and pneumococcal (“Pevnar”) vaccinations he received on January 19, 2017. *See*

¹ Although this Decision has been formally designated “not to be published,” it will nevertheless be posted on the Court of Federal Claims’ website in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012). **This means the Decision will be available to anyone with access to the internet.** As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the Decision’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request 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). Otherwise, the Decision in its present form will be available. *Id.*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (codified as amended at 42 U.S.C. §§ 300aa-10–34 (2012)) (hereinafter “Vaccine Act” or “the Act”). All subsequent references to sections of the Vaccine Act shall be to the pertinent subparagraph of 42 U.S.C. § 300aa.

Stipulation ¶ 2, 4, dated April 4, 2023 (ECF No. 64); *see also* Pet. at 3-5. On November 10, 2021, the case caption was amended to reflect Joanne Damon as Petitioner of this case, as the personal representative of Mr. Damon's estate, in light of Mr. Damon's death on February 14, 2021. ECF No. 45.

Respondent denies "that the Tdap, flu, and/or Prevnar vaccines caused Mr. Damon's alleged NMO, any other injury, or his death." *See* Stipulation ¶ 6. Nonetheless, both parties, while maintaining their above-stated positions, agreed in a stipulation filed April 4, 2023 that the issues before them can be settled and that a decision should be entered awarding Petitioner compensation.

I have reviewed the file, and based upon that review, I conclude that the parties' stipulation is reasonable. I therefore adopt it as my decision in awarding damages on the terms set forth therein.

The stipulation awards:

a lump sum of \$250,000.00 in the form of a check payable to petitioner, Joanne Damon, as legal representative of the estate of Leo Damon, Jr.

Stipulation ¶ 8. This award represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

I approve a Vaccine Program award in the requested amount set forth above to be made to Petitioner. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court is directed to enter judgment herewith.³

IT IS SO ORDERED.

s/ Katherine E. Oler
Katherine E. Oler
Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by jointly filing notice renouncing their right to seek review.

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

JOANNE DAMON, as personal
representative of the estate of,
LEO DAMON, JR.,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 19-1510V
Special Master Oler
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Joanne Damon (“petitioner”), as the personal representative of the estate of Leo Damon, Jr., (“Mr. Damon”), deceased, 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 injuries and death allegedly related to Mr. Damon’s receipt of tetanus, diphtheria, and acellular pertussis (“Tdap”), influenza (“flu”), and pneumococcal (“Prevnar”) vaccines, which said vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Mr. Damon received the Tdap, flu, and Prevnar vaccines on January 19, 2017.
3. The vaccines were administered within the United States.
4. Petitioner alleges that as a result of receiving the Tdap, flu, and Prevnar vaccines, Mr. Damon suffered neuromyelitis optica (“NMO”). Mr. Damon passed away on February 14, 2021. Petitioner further alleges that Mr. Damon’s death was the sequela of his alleged vaccine-related injury.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Mr. Damon as a result of his alleged condition or his death.

6. Respondent denies that the Tdap, flu, and/or Prevnar vaccines caused Mr. Damon's alleged NMO, 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), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of **\$250,000.00** in the form of a check payable to petitioner as legal representative of the estate of Leo Damon, Jr. 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. 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.

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 Leo Damon, Jr., under the laws of the State of Maryland. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as the legal representative of the Estate of Leo Damon, Jr. If petitioner is not authorized by a court of competent jurisdiction to serve as the legal representative of the Estate of Leo Damon, Jr., 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 Leo Damon, Jr., upon submission of written documentation of such appointment to the Secretary.

13. In return for the payment 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 Leo Damon, Jr., on behalf of herself, the Estate, and Mr. Damon'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. § 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. Damon, resulting from, or alleged to have resulted from, the Tdap, flu, and/or Prevnar vaccines administered on January 19, 2017, as alleged in a Petition for vaccine compensation filed on September 30, 2019, in the United States Court of Federal Claims as petition No. 19-1510V.

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 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 Tdap, flu, and/or Prevnar vaccines caused Mr. Damon's alleged NMO, any other injury, or his death.

17. All rights and obligations of petitioner hereunder in her capacity as personal representative of the Estate of Leo Damon, Jr., shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

Respectfully submitted,

PETITIONER:


DocuSigned by:

JOANNE DAMON

ATTORNEY OF RECORD FOR PETITIONER:


JESSICA ANNE OLINS
Maglio Christopher & Toale (WA)
1325 Fourth Avenue
Suite 1730
Seattle, WA 98101
Tel: (888) 952-5242
jolins@mctlawyers.com


AUTHORIZED REPRESENTATIVE OF THE ATTORNEY GENERAL:


HEATHER L. PEARLMAN
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

AUTHORIZED REPRESENTATIVE OF THE SECRETARY OF HEALTH AND HUMAN SERVICES:

Digitally signed by Henry P. Mcmillan -S3
Henry P. Mcmillan -S3
Date: 2023.03.21 13:53:03 -04'00'
by
CDR GEORGE REED GRIMES, MD, MPH
Director, Division of Injury
Compensation Programs
Health Systems Bureau
Health Resources and Services
Administration
U.S. Department of Health
and Human Services
5600 Fishers Lane, 08N146B
Rockville, MD 20857

ATTORNEY OF RECORD FOR RESPONDENT:


MARY E. HOLMES
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 616-5022
Mary.E.Holmes@usdoj.gov

Dated: April 4, 2023