

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: November 8, 2023

* * * * *

KENDETRICK ELLIS,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

No. 19-1762V

Special Master Dorsey

Damages Award; Varicella Vaccine;
Disseminated Varicella Vaccine-Strain
Viral Disease.

Jonathan Joseph Svitak, Shannon Law Group, P.C., Woodbridge, IL, for Petitioner.
Lara A. Englund, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES BASED ON PROFFER¹

On November 15, 2019, Brittany Dock, on behalf of her then minor son, Kendrick Ellis (“Petitioner”),² filed a petition for compensation under the National Vaccine Injury

¹ Because this Decision contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims’ website and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc> in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (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, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² After Petitioner reached the age of majority, the undersigned granted Petitioner’s motion to change the named Petitioner. Order dated Nov. 2, 2023 (ECF No. 80). On November 7, 2023, Petitioner filed an amended Petitioner to reflect the change in the case caption. Amended (“Am.”) Petition (ECF No. 81).

Compensation Program (“Vaccine Act” or “the Program”), 42 U.S.C. § 300aa-10 *et seq.* (2018).³ Petitioner alleged that he suffered “varicella-strain virus and related sequelae as well as vaccine-induced encephalopathy” as a result of a varicella vaccine administered on February 6, 2017. Petition at Preamble (ECF No. 1); Am. Petition at Preamble. On November 10, 2020, Respondent filed his Rule 4(c) Report conceding that Petitioner is entitled to compensation under the Vaccine Act for disseminated varicella vaccine-strain viral disease. Respondent’s Rept. (“Resp. Rept.”) at 1 (ECF No. 21). In light of Respondent’s concession, on April 2, 2021, the undersigned issued a ruling finding Petitioner entitled to compensation. Ruling on Entitlement dated Apr. 2, 2021 (ECF No. 30).

On November 8, 2023, Respondent filed a Proffer on Award of Compensation (“Proffer”), attached hereto as Appendix A. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. Proffer at 2. Based on the record as a whole, the undersigned finds that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, the undersigned awards Petitioner:

- (1) **A lump sum payment of \$120,000.00 in the form of a check payable to Petitioner.**
- (2) **A lump sum payment of \$21,680.91, representing compensation for satisfaction of the Colorado Department of Healthcare Policy and Financing Medicaid Lien, in the form of a check payable jointly to Petitioner and:**

**Colorado Department of Healthcare Policy and Financing
Attn: Kris Haffar
1570 Grant Street
Denver, CO 80203
State ID No. G215105**

Petitioner agrees to endorse the check to the Colorado Department of Healthcare Policy and Financing for satisfaction of the Medicaid lien.

Proffer at 2-3. This amount represents all elements of compensation to which Petitioner is entitled under § 15(a). *Id.*

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court **SHALL ENTER JUDGMENT** herewith.⁴

³ 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 (2018). All citations in this Decision to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties’ joint filing of notice renouncing the right to seek review.

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Special Master

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

KENDETRICK ELLIS,)	
)	
Petitioner,)	
)	
v.)	No. 19-1762V
)	Special Master Nora Beth Dorsey
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On November 15, 2019, Brittany Dock filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 to -34 (“Vaccine Act” or “Act”), on behalf of her son, Kendetrick Ellis (“petitioner”), who was then a minor, alleging that he suffered “varicella-strain virus and related sequelae as well as vaccine-induced encephalopathy” as a result of a varicella vaccine administered on February 6, 2017. ECF No. 1. On November 10, 2020, the Secretary of Health and Human Services (“respondent”) filed his Rule 4(c) Report conceding that petitioner is entitled to compensation under the Act for disseminated varicella vaccine-strain viral disease. ECF No. 21. On April 2, 2021, the Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 30. On November 2, 2023, after petitioner reached the age of majority, the Special Master granted petitioner’s motion to amend the caption to be included as the named petitioner. ECF No. 80. Petitioner filed an Amended Petition reflecting this change in the caption on November 7, 2023. ECF No. 81.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded **\$120,000.00** for pain and suffering, in the form of a check payable to petitioner. Petitioner agrees.

B. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy a Colorado Department of Healthcare Policy and Financing Medicaid Lien in the amount of **\$21,680.91**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action may have against any individual as a result of any Medicaid payments the Colorado Department of Healthcare Policy and Financing has made to or on behalf of petitioner from the date of his eligibility for benefits through the date of judgment in this case as a result of his vaccine-related injury suffered on or about February 6, 2017, under Title XIX of the Social Security Act.

The above amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

The parties recommend that compensation provided to petitioner should be made through two lump sum payments described below, and request that the Special Master's decision and the Court's judgment award the following:

- A. A lump sum payment of \$120,000.00 in the form of a check payable to petitioner; and
- B. A lump sum payment of \$21,680.91, representing compensation for satisfaction of the Colorado Department of Healthcare Policy and Financing Medicaid Lien, in the form of a check payable jointly to petitioner and:

Colorado Department of Healthcare Policy and Financing
Attn: Kris Haffar
1570 Grant Street
Denver, CO 80203
State ID No. G215105

Petitioner agrees to endorse the check to the Colorado Department of Healthcare Policy and Financing for satisfaction of the Medicaid lien.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D’ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

DARRYL R. WISHARD
Assistant Director
Torts Branch, Civil Division

s/ LARA A. ENGLUND
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Dated: November 8, 2023