

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-0463V

UNPUBLISHED

ROBERT PAYNE, on behalf of
ESTATE OF WANDA PAYNE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 26, 2023

Special Processing Unit (SPU); Joint
Stipulation on Damages; Influenza
(Flu) Vaccine; Shoulder Injury
Related to Vaccine Administration
(SIRVA); Guillain-Barre Syndrome
(GBS); Death

Gil L. Daley, II, Law Office of Gil L. Daley, II, P.C., Fort Worth, TX, for Petitioner.

Mallori Browne Openchowski, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON JOINT STIPULATION¹

On April 20, 2020, Robert Payne, on behalf of the Estate of Wanda Payne, 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 Wanda Payne suffered a shoulder injury and untimely demise due to Guillain-Barre Syndrome (“GBS”) resulting from an influenza (“flu”) vaccine received on or about October 9, 2017. Petition at 1; Stipulation, filed January 26, 2023, at ¶¶ 2-4. Petitioner further alleges the vaccine was administered in the United States, that GBS led to Mrs. Payne’s death, and that there has been no prior award or settlement of a civil action for damages on Mrs. Payne’s behalf as a result of Mrs. Payne’s alleged injury or death. Petition at ¶¶ 1, 3-5; Stipulation at ¶¶ 3-5. “Respondent denies that Mrs. Payne sustained a GBS Table injury or shoulder injury related to vaccine administration (“SIRVA”); denies that the flu vaccine caused Mrs.

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in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 section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Payne's alleged GBS, alleged shoulder injury, or any other injury; and further denies that the flu vaccine caused her death." Stipulation at ¶ 6.

Nevertheless, on January 26, 2023, 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 \$76,000.00 in the form of a check payable to Petitioner, as legal representative of the Estate of Wanda Payne. Stipulation at ¶ 8. This amount represents compensation for all items of damages that would be available under Section 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 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.

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

ROBERT PAYNE, on behalf of the estate of
WANDA PAYNE, deceased,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 20-463V
Chief Special Master Corcoran
SPU

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Robert Payne, as legal representative of the Estate of Wanda Payne, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program") on April 20, 2020. The petition seeks compensation for injuries leading to the death of Wanda Payne ("Mrs. Payne") allegedly related to her receipt of an influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Mrs. Payne received a flu vaccine on or about October 9, 2017.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Mrs. Payne sustained "a shoulder injury," and the onset of Guillain-Barre Syndrome ("GBS") within the Table time period following the flu immunization she received on or about October 9, 2017, and further alleges that GBS ultimately lead to Mrs. Payne's death.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on Mrs. Payne's behalf as a result of Mrs. Payne's alleged injury or death.

6. Respondent denies that Mrs. Payne sustained a GBS Table injury or shoulder injury related to vaccine administration (SIRVA"); denies that the flu vaccine caused Mrs. Payne's alleged GBS, alleged shoulder injury, or any other injury; and further denies that the flu vaccine caused 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 \$76,000.00 in the form of a check payable to petitioner, as legal representative of the Estate of Wanda Payne, representing 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 his 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 prepaid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation and any amounts 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 petitioner presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the legal representative of Wanda Payne's estate under the laws of the State of Texas. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing petitioner's appointment as legal representative of Mrs. Payne's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of Wanda Payne 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 Wanda Payne upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in petitioner's individual capacity, and as legal representative of the estate of Wanda Payne, on petitioner's own behalf and on behalf of the estate and Mrs. Payne'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 United States 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 Mrs. Payne resulting from, or alleged to have resulted from, the vaccination as alleged by petitioner in a petition for vaccine compensation filed on or about April 20, 2020 in the United States Court of Federal Claims as petition No. 20-463V.

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 vaccine caused Mrs. Payne's alleged injuries or death, or any other injury.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representative of the estate of Wanda Payne.

END OF STIPULATION

Respectfully submitted,


PETITIONER:


ROBERT PAYNE

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