

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: May 31, 2022

LEILA M. HUBBARD, *as parent and
natural guardian, on behalf of J.B.B.,
a minor,*

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 20-981V

Special Master Sanders

Decision on Proffer; Damages; Hepatitis B
Vaccine; Diphtheria-Tetanus-Acellular
Pertussis (“DTaP”) Vaccine; Pneumococcal
Conjugate (“PCV”) Vaccine; Haemophilus
Influenzae Type B (“Hib”) Vaccine;
Hepatitis A Vaccine; Sterile Abscesses

Robert D. Proffitt, Proffitt & Cox, LLP, Columbia, SC, for Petitioner.
Ronalda E. Kosh, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On August 6, 2020, Leila Hubbard (“Petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program² (“Vaccine Program” or “Program”). 42 U.S.C. § 300aa-10 to 34 (2012). Petitioner alleged that the Hepatitis B; diphtheria, tetanus, acellular pertussis (“DTaP”); pneumococcal conjugate (“PCV”); haemophilus influenzae type B (“Hib”); and Hepatitis A vaccines her child, J.B.B., received between October 31, 2017 and May 2, 2019, caused him to “suffer[] persistent and recurring sterile abscesses and related conditions in his right and left thighs where the vaccines were administered” Pet. ¶¶ 5–6, ECF No. 1.

On August 20, 2021, Respondent filed his report pursuant to Vaccine Rule 4(c). Resp’t’s Report, ECF No. 25. Respondent “recommend[ed] that compensation be awarded.” *Id.* at 1. He stated that a review of the record indicated that “J.B.B. developed persistent and recurring sterile abscesses, which were more likely than not caused by the administration of vaccines [stated in

¹ This Decision shall be posted 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). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted Decision. If, upon review, the undersigned agrees that the identified material fits within the requirements of that provision, such material will be deleted from public access.

² National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755 (“the Vaccine Act” or “Act”). Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Petitioner’s petition] in J.B.B.’s left and right thighs.” *Id.* at 7. Respondent continued that Petitioner “has satisfied the statutory requirement that J.B.B.’s injury lasted for at least six months, or resulted in ‘inpatient hospitalization and surgical intervention’ as required by 42 U.S.C. § 300aa-11(c)(1)(D)(i)(iii).” *Id.* Respondent concluded that “[P]etitioner has satisfied all legal prerequisites for compensation under the Act.” *Id.* On December 30, 2021, the undersigned issued a Ruling on Entitlement, finding that Petitioner was entitled to compensation. Ruling on Entitlement, ECF No. 26.

On May 6, 2022, Respondent filed a Proffer on Award of Compensation (“Proffer”). Proffer, ECF No. 31. 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 Proffer, attached as Appendix A, the undersigned awards Petitioner:

A lump sum payment of \$100,00.00, representing compensation for pain and suffering, in the form of a check payable to [P]etitioner as guardian/conservator of J.B.B., for the benefit of J.B.B. . . . [and a] lump sum payment of \$7,234.60, representing compensation for satisfaction of the State of South Carolina Medicaid lien, in the form of a check payable jointly to [P]etitioner[and Equian]³ These amounts represent all elements of compensation to which [P]etitioner, on behalf of J.B.B., is entitled under 42 U.S.C. § 300aa-15(a).

Id. at 2–3.

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

IT IS SO ORDERED.

s/Herbrina D. Sanders
Herbrina D. Sanders
Special Master

³ The proffer states that “Petitioner agrees to endorse this payment to Equian[.]” and lists an address for Equian. *Id.* at 3.

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

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner, on behalf of J.B.B., should be awarded \$100,000.00 in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Medicaid Lien

Respondent proffers that petitioner, on behalf of J.B.B., should be awarded funds to satisfy the State of South Carolina lien in the amount of \$7,234.60, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of South Carolina may have against any individual as a result of any Medicaid payment the State of South Carolina has made to or on behalf of petitioner from the date of eligibility for benefits through the date of judgment in this case as a result of the alleged vaccine-related injury suffered on or about October 31, 2017, January 5, 2018, March 9, 2018, May 14, 2018, November 2, 2018, February 14, 2019, and May 2, 2019, under Title XIX of the Social Security Act.

These amounts represent all elements of compensation to which petitioner, on behalf of J.B.B., is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

The parties recommend that the compensation provided to petitioner, on behalf of J.B.B., should be made through the following payments:¹

- A. A lump sum payment of **\$100,000.00**, representing compensation for pain and suffering, in the form of a check payable to petitioner as guardian/conservator of J.B.B., for the benefit of J.B.B. No payments shall be made until petitioner provides respondent documentation establishing that she has been appointed as the guardian/conservator of J.B.B.'s estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of J.B.B., any such payment shall be made to the party or parties appointed by a

¹ Should J.B.B. die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future pain and suffering.

court of competent jurisdiction to serve as guardian/conservator of the estate of J.B.B. upon submission of written documentation of such appointment to the Secretary; and

- B. A lump sum payment of **\$7,234.60**, representing compensation for satisfaction of the State of South Carolina Medicaid lien, in the form of a check payable jointly to petitioner:

Equian
P.O. Box 182643
Columbus, OH 43218

Petitioner agrees to endorse this payment to Equian.

III. Summary of Recommended Payments Following Judgment

- A. Lump sum paid to petitioner as the court-appointed guardian/conservator of J.B.B.'s estate: **\$100,000.00**
- B. Medicaid lien: **\$7,234.60**

Respectfully submitted,

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Acting Director
Torts Branch, Civil Division

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s/ RONALDA E. KOSH
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DATED: May 6, 2022