

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

Filed: September 14, 2023

JOHN ROPER, as parent and natural guardian of infant, J.R.,

No. 20-1032V

Petitioner,

Special Master Sanders

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

Bruce W. Slane, Law Office of Bruce W. Slane, P.C., White Plains, NY, for Petitioner. Tyler King, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION

On August 18, 2020, John Roper ("Petitioner") on behalf of his son, J.R., filed a petition for compensation pursuant to the National Vaccine Injury Compensation Program. 42 U.S.C. § 300aa-10 to -34 (the "Vaccine Program"). Petitioner alleged that the diphtheria-tetanus-acellular pertussis ("Dtap"), Inactivated poliovirus ("IPV"), and hepatitis A vaccines that J.R. received on September 28, 2018 caused him to suffer from encephalopathy or encephalitis. Pet. at 1, ECF No. 1. Petitioner further alleged that J.R.'s injury lasted for more than six months. Id. ¶ 67.

On July 12, 2023, the parties filed a stipulation in which they state that a decision should be entered awarding compensation to Petitioner. Stipulation ¶ 7, ECF No. 55. Respondent "denies that the vaccine caused J.R. to suffer from encephalitis or any other injury or his current condition." Id. ¶ 6. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. See id. ¶ 7. I find the stipulation reasonable and adopt it as the decision of the Court in awarding damages, on the terms set forth therein.

1 Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted 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, 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.

The parties stipulate that Petitioner shall receive the following compensation:

- a. **A lump sum of \$80,000 in the form of a check payable to [P]etitioner as guardian/conservator of J.R.'s estate, representing compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).**
- b. **A lump sum of \$1,585.48, which amount represents compensation for past unreimbursable expenses, in the form of a check payable to [P]etitioner[.]**

Id. ¶ 8.

I approve the requested amount for Petitioner's compensation. Accordingly, an award should be made consistent with the stipulation.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

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

³ Pursuant to Vaccine Rule 11(a), entry of judgment is 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**

JOHN ROPER, as parent and
natural guardian of infant, J.R.,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 20-1032V
Special Master Sanders
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of his son, J.R., petitioner 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 allegedly related to J.R.'s receipt of the diphtheria-tetanus-acellular pertussis (Dtap), Inactivated poliovirus ("IPV"), and hepatitis A vaccines, which are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).

2. J.R. received the Dtap, IPV, and hepatitis A vaccines on September 28, 2018.

3. The vaccines were administered within the United States.

4. Petitioner alleges that J.R. suffered from Table encephalopathy or encephalitis as a result of the vaccines, or in the alternative that his vaccinations caused-in-fact his encephalitis, and that he experienced the residual effects of this injury for more than six months.

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

6. Respondent denies that the vaccine caused J.R. to suffer from encephalitis or any other injury or his current condition.

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 payments:

- a. A lump sum of \$80,000.00 in the form of a check payable to petitioner as guardian/conservator of J.R.'s estate, representing compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). No payment shall be made until petitioner provides respondent with documentation establishing that he has been appointed as guardian/conservator of J.R.'s estate;
- b. A lump sum of \$1,585.48, which amount represents compensation for past unreimbursable expenses, in the form of a check payable to petitioner, John Roper.

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 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 and any amounts awarded pursuant to paragraph 12 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. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursed expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of J.R. as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. Petitioner represents that he is presently, or if necessary will become, duly authorized to serve as guardian of J.R.'s estate under the laws of New York. In return for the payments described in paragraphs 8 and 12, petitioner, in his individual capacity and as legal representatives of J.R., on behalf of himself, J.R., and his 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 J.R. resulting from, or alleged to have resulted from, the vaccinations administered on September 28,

2018, as alleged by petitioner in a petition for vaccine compensation filed on August 18, 2020, in the United States Court of Federal Claims as petition No. 20-1032V.

14. If J.R. should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. 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.

16. 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 10 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.

17. Petitioner hereby authorizes respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that any vaccine caused J.R.'s alleged encephalitis, any other injury or his current disability, or that J.R. suffered an injury contained in the Vaccine Injury Table.

19. All rights and obligations of petitioners hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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Respectfully submitted,


PETITIONER:


JOHN ROPIE

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PETITIONERS:**


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George R. Grimes Digitaly signed by George R. Grimes, 514
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Dated: July 12, 2023