

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

No. 08-0906V

Filed: 15 June 2010

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JESSICA NEFF, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND HUMAN SERVICES, *

Respondent. *

* * * * *

Decision based on Stipulation of the Parties;
HPV; Vasovagal Syncope

Theodore G. Pashos, Esq., Niedner Bodeux Carmichael Huff Lenox and Pashos, LLP, St. Charles, Missouri, for Petitioner;

Debra A. Filteau Begley, Esq., United States Department of Justice, Washington, District of Columbia, for Respondent.

UNPUBLISHED DECISION¹

ABELL, Special Master.

On 30 April 2010, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Jessica Neff, Petitioner, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

1. Jessica Neff (“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 Petitioner’s receipt of a human papillomavirus (“HPV”) vaccination, which vaccine is included on the Vaccine Injury Table (the “Table”) at 42 C.F.R. § 100.3(a).

2. Petitioner received an HPV vaccination on 21 December 2006.

¹ Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

3. The vaccine was administered within the United States.

4. Petitioner suffered a vasovagal syncope that was caused in fact by the administration of the vaccination. As a result of her vasovagal syncope, she fell and struck her head which caused brain bleeding, a concussion, and loss of sense of smell. Petitioner has experienced the residual effects of her injury for more than six months after her vaccination.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.

6. There is not a preponderance of the evidence demonstrating that Petitioner's condition is due to a factor unrelated to the administration of her 21 December 2006 immunization.

7. Accordingly, Petitioner is entitled to compensation under the terms of the Vaccine Program. Therefore, a decision should be entered awarding the compensation described in Paragraph 8 of this [Decision].

8. As soon as practicable after an entry of judgment reflecting [this Decision], 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 [shall] issue the following vaccine compensation payments:

a. A lump sum of **\$110,000.00** in the form of a check payable to Petitioner[, which] amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and

b. A lump sum of **\$10,163.26** in the form of a check payable to Petitioner and Petitioner's attorney, Theodore G. Pashos of Niedner, Bodeux, Carmichael, Huff, Lenox & Pashos, LLP, for attorneys' fees.

9. Payments made pursuant to paragraph 8 of this [Decision][shall] be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

10. The parties and their attorneys further agree and stipulate that, except for any award for reasonable attorney's fees and litigation costs, the money provided pursuant to this [Decision] [shall] be used solely for the benefit of Petitioner, 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).

11. In return for the payments described in paragraph 8, Petitioner, in her individual capacity and on behalf of her heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to, or death of, Petitioner resulting from, or alleged to have resulted from, the HPV vaccination that was administered on 21 December 2006, as alleged by Petitioner in a petition for vaccine compensation filed on or about 18 December 2008, in the United States Court of Federal Claims as petition No. 08-0906V.

12. If Petitioner should die prior to receiving the payment described in paragraph 8(a), [the Stipulation] shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

13. [If the undersigned Special Master does not issue a Decision in complete conformity with the terms of the Stipulation between the parties, or in the event the Court of Federal Claims does not enter judgment in conformity with a decision that is in complete conformity with the terms of the Stipulation between the parties,] then the parties' settlement and their Stipulation shall be null and void at the discretion of either party.

14. This [Decision] expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. 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.

15. All rights and obligations of Petitioner hereunder shall apply equally to Petitioner's successors and/or assigns.

I find this conclusion reasonable, just and proper, and adopt these provisions as the Decision of this Court in awarding damages. Therefore, in the absence of the filing of a motion for review, filed pursuant to Vaccine Rule 23 within 30 days of this date, **the clerk shall forthwith enter judgment** in accordance herewith.

IT IS SO ORDERED.

s/ Richard B. Abell
Richard B. Abell
Special Master