

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

No. 06-0750V

Filed: 30 July 2008

* * * * *
MARY WRIGHT, as legal representative *
of the estate of ALICIA HENDRICK, *
a minor child, *
*
 Petitioner, *
*
 v. *
*
SECRETARY OF HEALTH AND *
HUMAN SERVICES, *
*
 Respondent. *
* * * * *

John William Hofmeyer, III, Esq., Oelwein, Iowa, for Petitioner;
Melonie J. McCall, Esq., U.S. Department of Justice, Washington, D.C. for Respondent.

UNPUBLISHED DECISION¹

ABELL, Special Master.

On 22 July 2008, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Alicia Hendrick, as represented by Petitioner Mary Wright, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

1. On behalf of the minor child Alicia S. Hendrick (Alicia), Petitioner Mary Wright filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 through 34 (the "Vaccine Program") on 12 February 2007. The petition seeks compensation for injuries allegedly related to Alicia's receipt of the varicella vaccine, which vaccine is included on the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a)(X).

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).

2. Alicia received the varicella vaccine on 16 November 2005.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Alicia sustained the first symptoms or manifestation of the onset of a severe allergic reaction, a rash with erythema and pruritis, within hours of vaccination. Petitioner further alleges that as a sequela of the rash, Alicia suffered scarring that lasted 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 Alicia as a result of her condition.
6. Respondent denies that Alicia's alleged injuries were vaccine-related, and denies that she suffers any current disabilities that are sequelae of her alleged injuries.
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 [by the Undersigned] 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 **\$25,000.00** in the form of a check payable to Petitioner as legal representative of the estate of Alicia Hendrick. This amount represents full compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a) [to which Petitioner would be entitled]; and
 - b. A lump sum of **\$6,932.40** in the form of a check payable to Petitioner and Petitioner's attorney, John W. Hofmeyer, III, for attorneys' fees and costs. In compliance with General Order No. 9, Petitioner represents that she incurred no out-of-pocket expenses in proceeding on the Petition.
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 attorneys' fees and litigation costs [incurred in this proceeding] and any out-of-pocket expenses incurred by Petitioner in proceeding on the Petition, the money provided pursuant to this [Decision] [shall] be used solely for the benefit of Alicia 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Alicia's estate under the laws of the state of Iowa. No payments pursuant to this [Decision] shall be made until Petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Alicia's

estate. If Petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Alicia S. Hendrick at the time a payment pursuant to this [Decision] is made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of Alicia S. Hendrick upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraph 8(a), Petitioner, in her individual capacity and as legal representative of Alicia, and on behalf of herself, Alicia, and her heirs, executors, administrators, successors or assigns, do 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 Alicia, resulting from, or alleged to have resulted from, the varicella vaccination administered to her on or about 16 November 2005, as alleged by Petitioner in a petition for vaccine compensation filed on 3 November 2006, in the United States Court of Federal Claims as petition No. 06-0750V.

13. If Alicia should die prior to receiving the payment described in paragraph 8(a), this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both parties.

14. [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.

15. 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.

16. All rights and obligations of Petitioner hereunder shall apply equally to her successors and assigns as legal representatives of Alicia Hendrick.

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.

Richard B. Abell
Special Master