

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-0796V

Filed: 15 June 2010

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BECKY EDWARDS, *

Petitioner, *

v. *

SECRETARY OF HEALTH
AND HUMAN SERVICES, *

Respondent. *

* * * * *

Sheila Ann Bjorklund, Esq., Lommen, Abdo, Cole, King & Stageberg, P.A., Minneapolis, Minnesota, for Petitioner;
Debra A. Filteau Begley, Esq., United States Department of Justice, Washington, District of Columbia, for Respondent.

Decision on Stipulation of the Parties;
Td; Guillain-Barré Syndrome;
Miller-Fisher Variant

UNPUBLISHED DECISION¹

ABELL, Special Master.

On 9 June 2010, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Becky Edwards, Petitioner, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

1. 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 Tetanus Diphtheria ("Td") vaccine, which vaccine is included on the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).

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. Petitioner received a Td vaccination on 7 August 2006.

3. The vaccine was administered within the United States.

4. Petitioner alleges that she sustained vaccine-related injuries diagnosed as the Miller-Fisher variant (“MFV”) of Guillain-Barré Syndrome (“GBS”) and an autonomic dysfunction, and that both conditions were caused-in-fact by her Td vaccination. She further alleges that she experienced residual effects of these injuries for more than six months.

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. Respondent denies that Petitioner’s MFV/GBS and/or autonomic disorder were caused-in-fact by her Td vaccination.

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 [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 compensation payment:

A lump sum of **\$400,000.00** 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).

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 Undersigned] to award reasonable attorneys’ fees and costs incurred in proceeding upon this Petition.

10. Petitioner and her 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 pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this [Decision] [shall] 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 attorney’s fees and litigation costs, and past unreimbursable expenses, 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).

13. In return for the payments described in paragraphs 8 and 9, Petitioner does forever irrevocably and unconditionally 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 (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. § 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 Petitioner resulting from, or alleged to have resulted from, the Td vaccination administered on 7 August 2006, as alleged by Petitioner in a petition for vaccine compensation filed on or about 7 November 2008, in the United States Court of Federal Claims as petition No. 08-0796V.

14. If Petitioner should die prior to entry of the judgment, [the parties' Stipulation] shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. [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.

16. This [Decision] 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 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 [Decision] 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 [authorized 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. [The Stipulation] shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Petitioner's MFV/GBS and/or autonomic dysfunction were caused-in-fact by her Td vaccination

19. All rights and obligations of Petitioner hereunder shall apply equally to Petitioner's heirs, executors, administrators, 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