

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-557V

Filed: April 7, 2011

Unpublished

JENNIFER SWANN and CASEY CHAVEZ,
Parents of XANDER CHAVEZ, a Minor,

Petitioners,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Stipulation; Diphtheria-tetanus-
acellular pertussis, DTaP; Rotavirus;
Pneumococcal; Hepatitis B, Hep B;
Inactivated polio, IPV; Hemophi-
lus influenza type B, HIB; Encephalo-
pathy; Seizure disorder; Develop-
mental delay

Andrew D. Downing, Rhodes, Hieronymus, et al., Tulsa, O.K., for Petitioner.

Althea Walker Davis, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

GOLKIEWICZ, Special Master.

On April 6, 2011, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioners allege their son suffered an encephalopathy in the time period set forth on the Table as a consequence of the vaccines he received on January 30, 2007, and that the vaccinations he received on April 17, 2007, aggravated his condition. Petitioners further allege that their son developed a seizure disorder and developmental delay as sequelae of his alleged vaccine injury and that he experienced the residual effects of the injury for more than six months. Respondent denies that petitioners' son developed an encephalopathy within the time period set forth on the Table; denies his January 30, 2007, vaccinations caused his encephalopathy and current disabilities; denies his April 17, 2007, vaccinations aggravated his alleged vaccine injury; and denies his current disabilities are sequelae of his alleged injury. Nonetheless, the parties agreed informally to resolve this matter. Stipulation, filed April 6, 2011.

¹ The undersigned intends to post this decision on the website for the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). **As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the entire decision will be available to the public. Id. Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing.** Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.

The court hereby **ADOPTS** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. **Specifically, petitioners are awarded a lump sum of \$25,000.00 in the form of a check payable to petitioners as guardians/conservators of Xander's estate; petitioners are also awarded a lump sum of \$20,692.00 in the form of a check payable jointly to petitioners and petitioners' attorney of record for attorney fees and costs.** See Stipulation, ¶ 8, filed April 6, 2011 ("in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioners in proceeding on the petition.").²

The Clerk of the Court is directed to enter judgment accordingly.

IT IS SO ORDERED.³

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Special Master

² This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C.A. §300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See generally, Beck v. Secretary of the Dept. of Health & Human Servs., 924 F.2d 1029 (Fed. Cir. 1991).

³ This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

JENNIFER SWANN and CASEY)
CHAVEZ, parents of XANDER CHAVEZ,)
a minor,)
)
Petitioners,)
v.)
)
SECRETARY OF HEALTH)
AND HUMAN SERVICES,)
)
Respondent.)

No. 09-557V
Special Master Golkiewicz

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, Xander Chavez (“Xander”), petitioners 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 Xander’s receipt of the Diphtheria-Tetanus-acellular (“DTaP”), rotavirus, pneumococcal (“PCV”), hepatitis B, inactivated polio (“IPV”) and Hemophilus influenzae type B (Hib) vaccines, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Xander received immunizations on January 30, 2007, and April 17, 2007.
3. The vaccines were administered within the United States.
4. Petitioners allege that Xander sustained the first symptom or manifestation of the onset of an encephalopathy within the time period set forth in the Table following his January 30, 2007 vaccinations and that his April 17, 2007 vaccines aggravated his condition. Petitioners further allege that Xander developed a seizure disorder and developmental delay as sequelae of

his alleged vaccine injury, and that he experienced residual effects of his injury for more than six months.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Xander as a result of his condition.

6. Respondent denies that Xander suffered the onset of an encephalopathy within the time period set forth in the Table; denies that his January 30, 2007 vaccines caused his encephalopathy and current disabilities; denies that his April 17, 2007 vaccines aggravated his alleged vaccine injury; and denies that his current disabilities are sequelae of his alleged injury.

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 petitioners have 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 \$25,000.00 in the form of a check payable to petitioners as guardians/conservators of Xander's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and

b. A lump sum of \$20,692.00 in the form of a check payable to petitioners and petitioners' attorney, Andrew D. Downing, Esquire, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioners in proceeding on the petition.

9. Petitioners and their 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.

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

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation, will be used solely for the benefit of Xander 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).

12. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of Xander's estate under the laws of the State of Oklahoma. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Xander's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Xander at the time a payment pursuant to this Stipulation is to be 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 Xander Chavez upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraph 8, petitioners, in their individual capacity and as legal representatives of Xander Chavez, on behalf of themselves, Xander, and his

heirs, executors, administrators, successors or assigns, do 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 Xander resulting from, or alleged to have resulted from, the DTaP, rotavirus, PCV, hepatitis B, IPV, and Hib vaccines administered on January 30, 2007, and April 17, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about August 24, 2009, in the United States Court of Federal Claims as petition No. 09-557V.

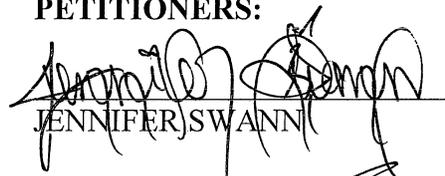
14. If Xander should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

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. 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'

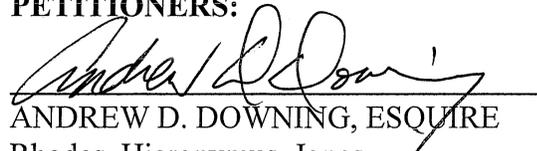
Respectfully submitted,

PETITIONERS:


JENNIFER SWANN

CASEY CHAVEZ

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Dated: 6 April 2011