

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

No. [REDACTED]V
Filed: January 20, 2010

JANE DOE/56, *
as the Prochein Ami of *
CHILD DOE/56, a minor, *
* Stipulation; DTaP; Seizure disorder
Petitioner, *
*
v. *
*
SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *
*
Respondent. *

DECISION¹

GOLKIEWICZ, Chief Special Master.

On January 15, 2010, the parties to the above-captioned case filed a Stipulation, attached hereto, memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleges Child Doe/56 suffered an injury, a seizure disorder, related to her receipt of a Diphtheria-Tetanus-Pertusis (“DTaP”) vaccine on May 27, 2004. In compliance with General Order #9, petitioner states in the Stipulation that she has not personally incurred costs in this proceeding. Stipulation, para 8a. Respondent denies Child Doe/56’s seizure disorder was caused by the DTaP vaccine. Nonetheless, the parties agreed informally to resolve this matter.

The court hereby **ADOPTS** the parties’ said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Specifically, **petitioner is awarded an amount sufficient to purchase the annuity contract as described within the Stipulation. Stipulation, para. 8b-11. The Secretary of Health and Human Services agrees to purchase the**

¹ The undersigned intends to post this decision on the United States Court of Federal Claims’s website, 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.

annuity contract, pursuant to which periodic payments will be made to Child Doe/56 for all elements of compensation under 42 U.S.C. § 300aa-15(a) as follows:

- a. Beginning November 12, 2021, \$20,000.00 per year, payable annually, for 4 years certain only, increasing at 4% compounded annually from the date payments begin.**
- b. Beginning November 12, 2021, \$1,000.00 per month for 14 years and 9 months certain only, increasing at 3% compounded annually from the date payments begin.**
- c. On November 12, 2033, a certain lump sum payment in the amount of \$81,325.99.**

See Stipulation, para. 8a, para 10.

Further, the parties have stipulated to attorney's fees and costs in a lump sum of **\$39,033.00** in the form of a check payable to petitioner and petitioner's attorney, Dennis W. Potts, Esq.²

The Clerk of the Court is directed to enter judgment accordingly.³

IT IS SO ORDERED.

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Chief 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 HHS, 924 F.2d 1029 (Fed. Cir. 1991).

³Pursuant 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.

THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

[REDACTED], as the Prochien)	
Ami of [REDACTED] Minor,)	
)	
Petitioner,)	
v.)	No. [REDACTED]V
)	Chief Special Master
SECRETARY OF HEALTH)	Gary Golkiewicz
AND HUMAN SERVICES,)	ECF
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On May 21, 2007, [REDACTED] ("petitioner") filed a petition for vaccine compensation on behalf of her minor daughter, [REDACTED], under the National Vaccine Injury Compensation Program. 42 U.S.C. § 300aa-10 to -34, as amended (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to [REDACTED] receipt of the Diphtheria-Tetanus-Pertussis ("DTaP") vaccine, which is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. [REDACTED] received the DTaP vaccine on May 27, 2004.
3. The vaccine was administered within the United States.
4. Petitioner alleges that on the night of the administration of the vaccine, [REDACTED] suffered the first symptom or manifestation of onset of a seizure disorder that was caused-in-fact by the DTaP vaccine.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of [REDACTED] as a result of her condition.

6. Respondent denies that [REDACTED]'s seizure disorder was caused by the DTaP vaccine.

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 \$39,033.00 in the form of a check payable to petitioner and petitioner's attorney, Dennis W. Potts, Esq., for attorney's fees and costs. In accordance with General Order # 9, petitioner represents that all litigation costs were paid by her attorney and that she did not personally incur any costs in proceeding on the petition, and

b. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company"). The amount described herein represents compensation for all remaining elements of compensation.

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;

b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;

c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;

d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of [REDACTED], pursuant to which the Life Insurance Company will agree to make the following payments periodically to [REDACTED] for all elements of compensation under 42 U.S.C. § 300aa-15(a):

- a. Beginning November 12, 2021, \$20,000.00 per year, payable annually, for 4 years certain only, increasing at 4% compounded annually from the date payments begin.
- b. Beginning November 12, 2021, \$1,000.00 per month for 14 years and 9 months certain only, increasing at 3% compounded annually from the date payments begin.
- c. On November 12, 2033, a certain lump sum payment in the amount of \$81,325.99.

The certain payments provided in this paragraph 10 shall be made as set forth above. Should [REDACTED] predecease the exhaustion of the certain payments during the certain period specified above, any remaining payments shall be made to her estate. However, petitioner shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of [REDACTED]'s death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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.

13. The parties and their attorneys further agree and stipulate that, except for any award for reasonable attorney's fees and costs incurred in this proceeding, the money provided pursuant to this Stipulation as part of the annuity contract will be used solely for the benefit of [REDACTED] [REDACTED] 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).

14. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of [REDACTED], on behalf of herself, [REDACTED], 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 [REDACTED] resulting from, or alleged to have resulted from, the DTaP vaccine administered to [REDACTED] on May 27, 2004, as alleged by petitioner in a petition for vaccine compensation filed on May 21, 2007, in the United States Court of Federal Claims as petition No. [REDACTED] V.

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 null and void at the sole discretion of either party.

