

In the United States **ORIGINAL** Federal Claims

OFFICE OF SPECIAL MASTERS

No. 97-314V

Filed: June 21, 2005

FILED
JUN 21 2005
U.S. COURT OF
FEDERAL CLAIMS

RUBEN ANIBAL FELIPE MALDONADO, *
A Minor, by and through His Parent and Legal *
Guardian, IRIS MALDONADO, *

Petitioner, *

v. *

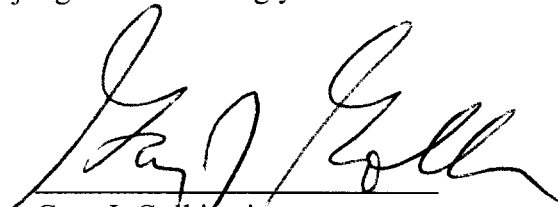
SECRETARY OF THE DEPARTMENT OF *
HEALTH AND HUMAN SERVICES, *

Respondent. *

DECISION¹

On June 16, 2005, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. The court hereby **grants** the parties' said Stipulation. The Clerk shall enter judgment accordingly.²

IT IS SO ORDERED.

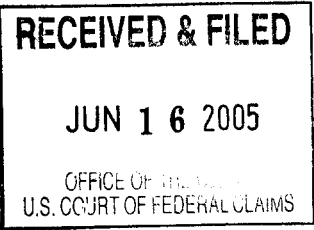

Gary J. Golkiewicz
Chief Special Master

¹The 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 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 will be available to the public. Id.

²Pursuant 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 Court of Federal Claims judge.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS



_____)
RUBEN ANIBAL FELIPE MALDONADO,)
A Minor, by and through His)
Parent and Legal Guardian,)
IRIS MALDONADO,)
)
Petitioner,)
)
v.) No. 97-314V
) Chief Special Master
) Golkiewicz
)
SECRETARY OF)
HEALTH AND HUMAN SERVICES,)
)
Respondent.)
_____)

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. On behalf of her son, Ruben Anibal Felipe Maldonado ("Ruben"), petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Ruben's receipt of the Oral Polio Vaccine ("OPV"), which is contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a) [(I)].

2. Ruben received his second dose of OPV on May 12, 1994.

3. The vaccine was administered within the United States.

4. Ruben sustained the first symptom or manifestation of the onset of a paralytic poliomyelitis within the time period set forth in the Table.

5. There is not a preponderance of the evidence demonstrating that Ruben's condition is due to a factor unrelated to his May 12, 1994, immunization.

6. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Ruben as a result of his condition.

7. Accordingly, Ruben is entitled to compensation for his paralytic polio (and not for any other, unrelated medical conditions) under the terms of the Vaccine Program. Therefore, 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 One hundred seventy-nine thousand eight hundred sixty and 44/100 dollars (\$179,860.44) in the form

of a check payable to petitioner and M.B. Financial Bank, as co-trustees of the Ruben Maldonado Special Needs Irrevocable Payback Trust. This amount represents compensation for past and future pain and suffering, compensation for first year expenses (in the amount of \$2,460.44), and compensation for future home modifications (in the amount of \$2,400.00).

b. A lump sum of \$2,108.90 in the form of a check payable jointly to petitioner and the State of Florida. This amount represents compensation for outstanding Medicaid liens asserted by the State of Florida.

c. A lump sum of \$703.35 in the form of a check payable jointly to petitioner and the State of Illinois. This amount represents compensation for outstanding Medicaid liens asserted by the State of Illinois.

d. 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").

9. The Life Insurance Company must have a minimum of \$100,000,000 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+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. Duff & Phelps 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 Ruben, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner and M.B. Financial Bank, as co-trustees of the Ruben Maldonado Special Needs Irrevocable Payback Trust, for the following items of compensation:

a. For future unreimbursable wheel chair expenses, beginning on the anniversary of the date of judgment in the year 2038, an annual amount of \$136 to be paid for the remainder of Ruben's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

b. For future unreimbursable expenses for household services, beginning on the anniversary of the date of judgment in the year 2011, an annual amount of \$2,604 to be paid for the remainder of Ruben's life, increasing at the rate of three percent (3%), compounded annually from the date of judgment.

c. For future unreimbursable internal medicine specialist, beginning on the anniversary of the date of judgment in the year 2011, an annual amount of \$110 to be paid for the remainder of Ruben's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

d. For future unreimbursable orthopedist expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$780 to be paid up to the anniversary of the date of judgment in year 2014, then beginning on the anniversary of the date of

judgment in 2014 an annual amount of \$130 to be paid for the remainder of Ruben's life, with both amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

e. For future unreimbursable neurologist expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$180 to be paid up to the anniversary of the date of judgment in year 2014, then beginning on the anniversary of the date of judgment in 2014 an annual amount of \$90 to be paid for the remainder of Ruben's life, with both amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

f. For future unreimbursable physical therapy expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$1,560 to be paid up to the anniversary of the date of judgment in year 2011, then beginning on the anniversary of the date of judgment in 2011 an annual amount of \$100 to be paid for the remainder of Ruben's life, with both amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

g. For future unreimbursable expenses for adapted vehicle equipment, beginning on the anniversary of the date of judgment in the year 2011, an annual amount of \$257.14 to be paid for the remainder of Ruben's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

h. For future unreimbursable leg x-rays, beginning on the first anniversary of the date of judgment, an annual amount of \$84 to be paid up to the anniversary of the date of judgment in year 2014, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

i. For future unreimbursable AP sacroiliac x-rays, beginning on the first anniversary of the date of judgment, an annual amount of \$72.80 to be paid up to the anniversary of the date of judgment in year 2014,

increasing at the rate of four percent (4%), compounded annually from the date of judgment.

j. For future unreimbursable lateral sacroiliac x-rays, beginning on the first anniversary of the date of judgment, an annual amount of \$72.80 to be paid up to the anniversary of the date of judgment in year 2014, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

k. For future unreimbursable EMG, beginning on the first anniversary of the date of judgment, an annual amount of \$322 to be paid up to the anniversary of the date of judgment in year 2014, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

l. For future unreimbursable leg braces, beginning on the first anniversary of the date of judgment, an annual amount of \$280 to be paid up to the anniversary of the date of judgment in year 2011, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

m. For future unreimbursable canes, beginning on the first anniversary of the date of judgment, an annual amount of \$65 to be paid up to the anniversary of the date of judgment in year 2014, then beginning on the anniversary of the date of judgment in 2014 an annual amount of \$9.29 to be paid for the remainder of Ruben's life, with both amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

n. For future unreimbursable miscellaneous expenses (ankle weight and raised toilet seat), beginning on the first anniversary of the date of judgment, an annual amount of \$3.84 to be paid for the remainder of Ruben's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to petitioner

and M.B. Financial Bank, as co-trustees of the Ruben Maldonado Special Needs Irrevocable Payback Trust, in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to petitioner and M.B. Financial Bank, as co-trustees of the Ruben Maldonado Special Needs Irrevocable Payback Trust, and do not require that the payment be made in one annual installment. Petitioner and M.B. Financial Bank, as co-trustees of the Ruben Maldonado Special Needs Irrevocable Payback Trust, will continue to receive the annuity payments from the Life Insurance Company only so long as Ruben is alive at the time that a particular payment is due. Petitioner shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Ruben's death.

12. 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, 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.

13. 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 special master shall preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

14. 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.

15. The petitioner and her attorney further agree and stipulate that, except for any award for past unreimbursable expenses, the money provided pursuant to this Stipulation [either immediately or as part of the annuity contract], will be used solely for the benefit of Ruben 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).

16. The money provided pursuant to this Stipulation is limited to those elements of compensation described in 42 U.S.C. §300aa-15 related to Ruben's paralytic polio. Petitioner intends to create an irrevocable special needs trust to maintain Ruben's eligibility for public aid for needs unrelated to his paralytic polio.

17. Pursuant to 42 U.S.C. § 1396p(d)(4)(A), petitioner plans to create an irrevocable special needs trust on behalf of her son, Ruben Anibal Felipe Maldonado, for which M.B. Financial Bank and petitioner shall serve as co-Trustees, provided that the terms of such trust are approved by the State of Illinois Departments of Public Aid and Human Services and has cleared all case guidance by the Bureau of Policy and Training. Petitioner represents that, prior to making any payments to the trust, she will have received written authorization to do so from the State of Illinois Department of Public Aid. Petitioner represents that it is her intent to add to the Ruben Maldonado Special Needs Irrevocable Payback Trust either future discovered assets of Ruben Anibal Felipe Maldonado, or funds in excess of the Illinois Department of Public Aid or Social Security Administration Supplemental Security Income cash asset limit of

\$2,000.00 which accumulate in the Trust account without further court approval.

18. To the extent that petitioner deposits funds from any payments pursuant to this stipulation (other than those described in subparagraphs 8.b. and 8.c. or those awarded pursuant to proceedings described in paragraph 13) into the Ruben Maldonado Special Needs Irrevocable Payback Trust, petitioner assigns her rights to such payments to the Ruben Maldonado Special Needs Irrevocable Payback Trust, as well as any obligations arising as a result of receiving such payments.

19. Petitioner represents that she presently is, or within ninety (90) days of the date of judgment will become, duly authorized to serve as guardian of Ruben's estate under the laws of the State of Illinois.

20. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of Ruben, on behalf of herself, Ruben, and his 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 Ruben resulting from, or alleged to have resulted from, the OPV vaccination administered on May 12, 1994, as alleged by petitioner in a petition for vaccine compensation filed on or about May 1, 1997, in the United States Court of Federal Claims as petition No. 97-0314V.

21. In the event Ruben should die prior to the Secretary making any or all of the payments described in paragraphs 8(a), (b), and (c), this agreement shall be considered voidable upon a proper application to the Court on behalf of either or both of the parties.

22. In the event the special master fails to issue a decision in complete conformity with the terms of this Stipulation or in the event 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.

23. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act except as otherwise noted in

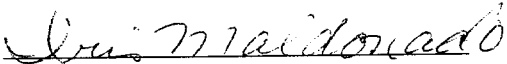
paragraph 13. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

24. All rights and obligations of petitioner hereunder shall apply equally to her successors and assigns as legal representatives of Ruben Anibal Felipe Maldonado.

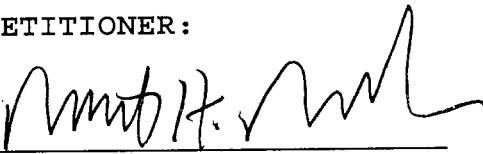
END OF STIPULATION

Respectfully submitted,


PETITIONER:


IRIS MALDONADO

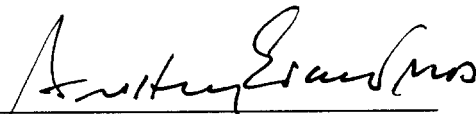
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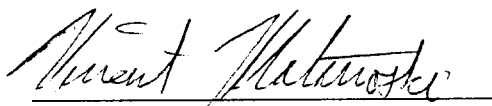
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Dated: 16 JUNE 2005