

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 09-785 V

Filed: January 13, 2011

Not for Publication

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LATASHA SHELTON, on behalf of her \*  
Minor son, MASON MALONE, \*

Petitioner, \*

v. \*

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

Respondent. \*

\*\*\*\*\*

W. Paul Glass, Birmingham, AL, for petitioner.  
Althea W. Davis, Washington, DC, for respondent.

Damages decision and attorneys' fees  
and costs decision based on stipulation;  
allegedly DTaP, rotavirus, Prevnar, IPV,  
and HIB caused acute renal failure,  
gastroenteritis, etc.

**MILLMAN, Special Master**

### **DECISION AWARDING DAMAGES AND ATTORNEYS' FEES AND COSTS<sup>1</sup>**

On January 12, 2011, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioner alleged that Mason Malone suffered from acute renal failure, gastroenteritis, hypovolemic shock, gastroesophageal reflux, and other injuries following HiB, inactivated polio, pneumococcal conjugate, rotavirus, and DTaP vaccinations. Respondent denies that petitioner's injuries were caused in fact by Mason's vaccinations. Nonetheless, the parties agreed to resolve this matter informally.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

The court hereby adopts the parties' said stipulation, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a lump sum of **\$7,500.00** in the form of a check made payable to petitioner as guardian/conservator of Mason's estate.

The court hereby adopts the parties said stipulation, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a total of **\$5,229.50**, representing reimbursement for Attorneys' Fees and Costs. The award shall be in the form of one check made jointly payable to petitioner and petitioner's attorney William Paul Glass, Esq. in the amount of **\$5,229.50**.

The court finds the amount requested by petitioner to be reasonable.

In accordance with the General Order #9 requirements, petitioner states she incurred no costs to pursue her petition.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: January 13, 2011

/s/ Laura D. Millman  
Laura D. Millman  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
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her minor son, MASON MALONE, )  
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Petitioner, )  
v. )  
 )  
SECRETARY OF HEALTH )  
AND HUMAN SERVICES, )  
 )  
Respondent. )  
\_\_\_\_\_

No. 09-785V  
Special Master Laura Millman

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Mason Malone ("Mason"), petitioner Latasha Shelton 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 Mason's receipt of the Diphtheria-Tetanus-acellular Pertussis ("DTaP"), hemophilus influenzae type b ("Hib"), inactivated polio, pneumococcal conjugate, and rotavirus vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Mason received his immunizations on December 13, 2007.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Mason sustained the first symptom or manifestation of the onset of acute renal failure, gastroenteritis, hypovolemic shock, and gastroesophageal reflux within two days of his vaccinations and that Mason experienced residual effects of this injury for 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 Mason as a result of his condition.

6. Respondent denies that Mason suffered the onset of acute renal failure, gastroenteritis, hypovolemic shock, and gastroesophageal reflux within two days of his vaccinations; denies the vaccines caused his injuries; denies his current disabilities are the sequelae of his alleged injury; and denies that Mason experienced the residual effects of this injury for more than six months.

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 \$7,500.00 in the form of a check payable to petitioner as guardian/conservator of Mason'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 \$5,229.50 in the form of a check payable to petitioner and petitioner's attorney, William Paul Glass, Esquire, for attorney's fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, petitioner incurred no out-of-pocket expenses in proceedings on this petition.

9. Petitioner and her 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. sec. 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 Mason 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. 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 Mason's estate under the laws of the State of Alabama.

13. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of Mason, on behalf of herself, Mason, and her heirs, executors, administrators, successors or assigns, does 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 petitioner resulting from, or alleged to have resulted from, the DTaP, Hib,

inactivated polio, pneumococcal conjugate and rotavirus vaccinations administered on December 13, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about November 26, 2009, in the United States Court of Federal Claims as petition No. 09-785V.

14. If Mason 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' 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. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Mason suffered the onset of acute renal failure, gastroenteritis, hypovolemic shock, and gastroesophageal reflux within two days of his vaccinations; that his current disabilities are sequelae of his alleged injury; or that the DTaP, Hib, inactivated polio, pneumococcal conjugate, and rotavirus vaccines caused his acute renal failure,



Respectfully submitted,

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LATASHA SHELTON

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Dated: 12/04/2010 1/12/11  
AWD