

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

BROOKE A. BORDERS,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 11-287V
Special Master Christian J. Moran

Filed: November 22, 2011

Stipulation; tetanus-diphtheria-
acellular pertussis; influenza
vaccine; idiopathic
thrombocytopenia purpura.

Brian P. McGraw, Middleton Reutlinger, Louisville, KY, for Petitioner;
Ryan D. Pyles, U.S. Department of Justice, Washington, D.C., for Respondent.

UNPUBLISHED DECISION¹

On November 21, 2011, the parties filed a joint stipulation concerning the petition for compensation filed by Brooke A. Borders on May 5, 2011. In her petition, the petitioner alleged that the tetanus-diphtheria-acellular pertussis (“Tdap”) vaccine and/or an influenza (“flu”) vaccine, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which petitioner received on September 14, 2010, caused petitioner to develop idiopathic thrombocytopenia purpura (“ITP”), the effects of which lasted for more than six months.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document's disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Respondent denies that the Tdap immunization and/or the flu immunization, either singly or in combination, is the cause of petitioner's alleged ITP and/or any other injury and denies that petitioner experienced residual effects of her alleged injury for more than six months.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$7,500.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a);**
- B. A lump sum payment of \$13,000.00 in the form of a check payable jointly to petitioner and petitioner's attorney, Brian P. McGraw, Esq., for attorneys' fees and costs available under 42 U.S.C. §300aa-15(a); and**
- C. A lump sum payment of \$350.00 in the form of a check payable to petitioner for all remaining litigation costs available under 42 U.S.C. §300aa-15(a). In compliance with General Order #9, this amount represents all out-of-pocket litigation expenses petitioner personally incurred in proceeding on the petition.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 11-287V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.
IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

for damages as a result of her condition.

6. Respondent denies that the Tdap immunization and/or the flu immunization, either singly or in combination, is the cause of petitioner's alleged ITP and/or any other injury and denies that petitioner experienced residual effects of her alleged 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. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a);

b. A lump sum of **\$13,000.00** in the form of a check payable jointly to petitioner and petitioner's attorney, Brian P. McGraw, Esq., for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e); and

c. A lump sum of **\$350.00** in the form of a check payable to petitioner for all remaining litigation costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, this amount represents all out-of-pocket litigation expenses petitioner personally incurred in proceeding on the 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. § 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, and past unreimbursable expenses, the money provided pursuant to this Stipulation will 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).

12. In return for the payments described in paragraph 8, petitioner, on behalf of herself 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. § 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 Tdap vaccination, the flu vaccination, or both, administered on or about September 14, 2010, as alleged by petitioner in a petition for vaccine compensation filed on or about May 5, 2011, in the United States Court of Federal Claims as petition No. 11-287V.

13. If petitioner 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.

14. 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.

15. 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the Tdap vaccine, flu vaccine, or both, caused petitioner's alleged ITP and/or any other injury.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

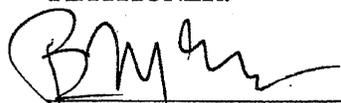
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Respectfully submitted,

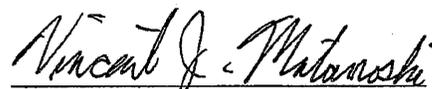
PETITIONER:


BROOKE A. BORDERS

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Dated: November 21, 2011