

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

SEAN NICHOLS, a minor, by his *
Mother and Natural Guardian, *
NICOLE KUZMIN-NICHOLS, *

Petitioner, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 11-417V
Special Master Christian J. Moran

Filed: January 22, 2013

Stipulation; Haemophilus influenzae
type b (Hib), Diphtheria-Tetanus-acellular
Pertussis (DTaP), Prevnar, Rotavirus
vaccines; transverse myelitis (TM)

UNPUBLISHED DECISION¹

Clifford J. Shoemaker, Shoemaker and Associates, Vienna, VA, for Petitioner;
Claudia B. Gangi, U.S. Department of Justice, Washington, D.C., for Respondent.

On January 18, 2013, respondent filed a joint stipulation concerning the petition for compensation filed by Nicole Kuzmin-Nichols on behalf of her son, Sean Nichols (“Sean”) on June 23, 2011. In her petition, petitioner alleged that the Haemophilus influenzae type b (“Hib”), Diphtheria-Tetanus-acellular Pertussis (“DTaP”), Prevnar, and Rotavirus vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which Sean received on June 27, 2008, caused him to develop transverse myelitis (“TM”). Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of Sean’s condition.

Respondent denies that the Hib, DTaP, Prevnar, and/or Rotavirus vaccine(s) caused Sean’s alleged TM, any other injury, or his current disabilities.

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.

¹The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Damages awarded in that stipulation include:

A lump sum payment of \$205,000.00 in the form of a check payable to Nicole Kuzmin-Nichols, as legal representative of the Estate of Sean Nichols. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 11-417V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jay All, at (202) 357-6353.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

6. Respondent denies that the Hib, DTaP, Prevnar, and/or Rotavirus vaccine(s) caused Sean's alleged TM, any other injury, or his current disabilities.

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 payment:

A lump sum of \$205,000.00 in the form of a check payable to petitioner as legal representative of the Estate of Sean Nichols. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. 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 parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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 entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. 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 Sean 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).

13. 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 Sean's estate under the laws of the State of Kentucky. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Sean's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the Estate of Sean Nichols 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 Sean Nichols upon submission of written documentation of such appointment to the Secretary.

14. In return for the payment described in paragraph 8 and any amount awarded pursuant to paragraph 9, petitioner, in her individual capacity and as legal representative of Sean, on behalf of herself, Sean, and his 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 Sean resulting from, or alleged to have resulted from, the Hib, DTaP, Prevnar, and/or Rotavirus vaccination(s) administered on June 27, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about June 23, 2011, in the United States Court of Federal Claims as petition No. 11-417V.

15. If Sean 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.

16. 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.

17. 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, except as noted in paragraph 9 above. 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.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the Hib, DTaP, Prevnar, and/or Rotavirus vaccine(s) caused Sean's TM, any other injury, or his current disabilities.

19. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of Sean Nichols.

END OF STIPULATION

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Respectfully submitted,

PETITIONER:



NICOLE KUZMIN-NICHOLS

ATTORNEY OF RECORD FOR
PETITIONER:



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Dated: 1-18-13