

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

KENNETH L. WIGGINS,

*

No. 10-317V

*

Special Master Christian J. Moran

*

Petitioner,

*

*

v.

*

Filed: July 19, 2012

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

Stipulation; diphtheria-tetanus-
acellular pertussis vaccine;

*

hepatitis A vaccine; transverse

*

Respondent.

*

myelitis.

UNPUBLISHED DECISION¹

Marc L. Silverman, Bellevue, WA, for Petitioner;

Lisa A. Watts, U.S. Department of Justice, Washington, D.C., for Respondent.

On June 28, 2012, the parties filed a joint stipulation concerning the petition for compensation filed by Kenneth L. Wiggins on May 25, 2010. In his petition, Mr. Wiggins alleged that the diphtheria-tetanus-acellular pertussis (“DTaP”) vaccine and hepatitis A vaccine, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which he received on June 1, 2007, caused him to suffer transverse myelitis, the effects of which lasted for greater than six months.

Respondent denies that the DTaP and/or hepatitis A vaccines caused petitioner’s TM, or any other injury, and denies that petitioner’s current disabilities are sequelae of a vaccine-related injury.

¹ The 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.

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 \$411,301.30 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); except as set forth in paragraph 8.b. of the attached stipulation;**
- B. An amount neither less nor greater than \$250,000.00 to purchase the annuity contract described in paragraph 10 of the attached stipulation, paid to the life insurance company from which the annuity will be purchased; and**
- C. A lump sum payment of \$30,077.75 in the form of a check payable to petitioner and petitioner's attorney, Marc L. Silverman, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e); and**
- D. In compliance with General Order #9, a lump sum payment of \$57,309.26 in the form of a check payable to petitioner for out-of-pocket expenses incurred by him 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 10-317V 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

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

KENNETH L. WIGGINS,)	
)	<u>ECF</u>
Petitioner,)	
v.)	No. 10-317V
)	Special Master
SECRETARY OF HEALTH AND)	Christian J. Moran
HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Kenneth L. Wiggins (“petitioner”) 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 his receipt of diphtheria-tetanus-acellular pertussis (“DTaP”) vaccine and hepatitis A (“Hep A”) vaccine, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Petitioner received the DTaP and Hep A vaccines on June 1, 2007.
3. The vaccines were administered within the United States.
4. Petitioner alleges that he suffered transverse myelitis (“TM”) as a consequence of receiving the DTaP and/or Hep A vaccines. Petitioner further alleges that he suffered 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 his behalf as a result of his condition.
6. Respondent denies that the DTaP and/or Hep A vaccines caused petitioner’s TM, or

any other injury, and denies that petitioner's current disabilities are sequelae of a vaccine-related injury.

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 \$411,301.30 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), except as set forth in paragraph 8.b.; and
- b. An amount neither less nor greater than \$250,000.00 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"); and
- c. A lump sum of \$30,077.75 in the form of a check payable to petitioner and petitioner's attorney, Marc L. Silverman, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e); and
- d. In compliance with General Order #9, a lump sum of \$57,309.26 in the form of a check payable to petitioner for out-of-pocket expenses incurred by him in proceeding on the petition.

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 petitioner, Kenneth L. Wiggins, pursuant to which the Life Insurance Company will agree to make payments periodically to Kenneth L. Wiggins for all remaining damages that would be available under 42 U.S.C. §300aa-15(a), as follows:

Beginning as soon as practicable after the date of judgment, \$1,977.49 per month for life only.

The purchase price of the annuity shall be neither less nor greater than \$250,000.00. In the event that the cost of the annuity payments set forth above varies from \$250,000.00, the monthly payment of \$1,977.49 shall be adjusted upward or downward to ensure that the total cost of the annuity is neither less nor greater than \$250,000.00. Written notice to the Secretary of Health and Human Services and to the Life Insurance Company shall be provided within twenty (20) days of Kenneth L. Wiggins'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. Petitioner and his attorney represent 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.

13. 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.

14. 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 either immediately or as part of the annuity contract, will be used solely for petitioner's benefit 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).

15. In return for the payments described in paragraph 8, petitioner, in his individual capacity, on behalf of 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 petitioner resulting from, or alleged to have resulted from, the DTaP and/or Hep A vaccines administered to him on June 1, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about May 25, 2010, in the United States Court of Federal Claims as petition No. 10-317V.

16. 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.

17. 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.

18. 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.

19. Petitioner hereby authorizes respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine

Injury Compensation Program System of Records No. 09-15-0056.

20. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the DTaP vaccine and/or Hep A vaccine administered to petitioner on June 1, 2007, caused his TM or any other injury, or that his current disabilities are sequelae of his alleged vaccine-related injury.

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

END OF STIPULATION

Respectfully submitted,

PETITIONER:


KENNETH L. WIGGINS

**ATTORNEY OF RECORD FOR
PETITIONER:**



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Dated: June 20, 2012