

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-789 V

Filed: August 26, 2010

Not for Publication

LUMARI TORRES, as the Parent and *
Natural Guardian of her Daughter *
DARLA RAMIREZ, *

Petitioner, *

v. *

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

Respondent. *

Mark Sadaka, New York, for petitioners.

Alexis Babcock, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹ **DECISION AWARDING ATTORNEYS' FEES AND COSTS**

On August 23, 2010, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleged that Darla suffered from Guillain Barre Syndrome (GBS) following a varicella vaccination. Respondent denies that Darla's GBS was caused in fact by the varicella vaccination. Nonetheless, the parties agreed to resolve this

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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.

matter informally.

The court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a lump sum of **\$24,000.00** in the form of a check made payable to petitioner as guardian/conservator of Darla's estate.

In the stipulation, the parties also agreed to settle the attorneys' fees and costs in this case and described the settlement terms. In accordance with the General Order #9 requirements, petitioner states she incurred no costs to pursue her petition. The court finds the amount requested by petitioner to be reasonable.

The court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a lump sum of **\$18,270.57** in the form of a check made jointly payable to petitioner and Mark Sadaka, Esq., for attorneys' fees and costs in this case.

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.²

IT IS SO ORDERED.

Dated: August 26, 2010

/s/ Laura D. Millman

Laura D. Millman
Special Master

² 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.

6. Respondent denies that the varicella vaccine caused Darla's GBS and current disabilities; denies that her current disabilities are sequelae of her alleged injury; and denies that Darla 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 \$24,000.00 in the form of a check payable to petitioner as guardian/conservator of Darla'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 \$18,270.57 in the form of a check payable to petitioner and petitioner's attorney, Mark Sadaka, Esq., for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner 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. Sec. 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, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of Darla 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 Darla's estate under the laws of the State of Florida. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Darla's estate. If petitioner are not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Darla 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 Darla upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8, petitioner, in her individual capacity and as legal representative of Darla, on behalf of herself, Darla, 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 Darla resulting from, or alleged to have resulted from, the varicella vaccination administered on June 12, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about November 17, 2009, in the United States Court of Federal Claims as petition No. 09-789V

14. If Darla should die prior to entry of the 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 Darla suffered from GBS as a result of her varicella vaccination; that her current disabilities are sequelae of her alleged injury; or that Darla experienced the residual effects of this injury for more than six months.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's

heirs, executors, administrators, successors, and/or assigns as legal representatives of Darla Ramirez.

END OF STIPULATION

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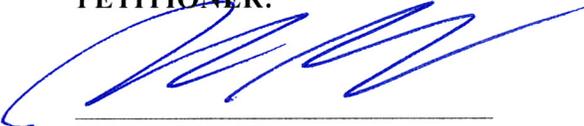
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Respectfully submitted,

PETITIONER:


LUMARI TORRES

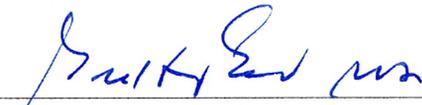
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Dated: 8/23/10