

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

DAN and KATIE DITTMAN, *
Parents and Next Friends of *
JOLIE TESS DITTMAN, A Minor child, *
Petitioners, *

No. 09-117V
Special Master Christian J. Moran

v. *

Filed: February 26, 2010

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
Respondent. *

Damages decision based on proffer;
Thrombocytopenia Purpura;
MMR vaccine; award of
attorney's fees based on proffer.

David A. Domina, Esq., Domina Law, Omaha, NE, for Petitioner;
Michael P. Milmo, Esq., United States Department of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION AWARDING DAMAGES*

Dan and Katie Dittman claimed that the measles mumps rubella vaccine ("MMR"), which their daughter, Jolie, received on March 5, 2007, caused her to suffer from idiopathic thrombocytopenia purpura. The Dittmans filed a petition on February 25, 2009, seeking compensation for Jolie's injuries pursuant to the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-1 et seq. (2006).

* Because this published 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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and to move to delete such information before 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.

In the Rule 4(c) report, respondent stated that the Dittmans' claim is compensable under the Act. Respondent stated that the medical records indicate that the Dittmans meet the requirements of demonstrating an on-Table injury. In addition, respondent stated that there is not a preponderance of the evidence that Jolie's injury is due to factors unrelated to the vaccines. Resp't Rep., filed May 27, 2009, at 2. The parties proceeded to determine the amount of compensation to which the Dittmans are entitled.

On February 5, 2010, respondent filed a Proffer on Award of Compensation, attached hereto as Appendix A. A status conference took place on Friday, February 26, 2010, during which the Dittmans noted their acceptance of respondent's Proffer on Award of Compensation with one small adjustment to account for the statement filed pursuant General Order No. 9, filed by petitioners on February 24, 2010, stating that petitioners incurred \$893.12 in costs. Respondent did not object to this additional amount.

Based upon the record as a whole, the special master finds the proffer reasonable and that petitioner is entitled to an award as stated in the Proffer. Pursuant to the attached Proffer, with Appendix, the court awards petitioners:

1. **A lump sum payment of \$16,566.54, in a check made payable to petitioners,** for pain and suffering and past unreimburseable expenses,
2. **A lump sum payment of \$8,393.12,** in a check made payable to petitioners and petitioners' counsel, Domina Law, for reasonable attorneys' fees and litigation costs.

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.

Any questions may be directed to Francina Segbefia 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

_____)	
DAN and KATIE DITTMAN,)	
Parents and next friends)	
Of a minor child,)	
JOLIE TESS DITTMAN,)	
)	
Petitioners,)	
)	
v.)	No. 09-117V
)	Special Master
SECRETARY OF)	Christian J. Moran
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

Respondent proffers that based upon the evidence of record, Jolie Tess Dittman has made a full recovery from her injuries resulting from Thrombocytopenia Purpura. Petitioners agree.

B. Lost Earnings

Respondent proffers that based upon the evidence of record, Jolie Tess Dittman is more likely than not to be gainfully employed. Therefore, respondent proffers that Jolie Tess Dittman should not be awarded lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(B). Petitioners agree.

C. Pain and Suffering

Respondent proffers that Jolie Tess Dittman should be awarded \$15,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. See 42 U.S.C. § 300aa-15(a)(4). Petitioners agree.

D. Past Unreimbursable Expenses

Evidence supplied by petitioners documents the expenditure by petitioners of past unreimbursable expenses related to Jolie Tess Dittman's vaccine-related injury. Respondent proffers that petitioners should be awarded past unreimbursable expenses in the amount of \$1,566.54. Petitioners agree.

E. Medicaid Lien

Petitioners represent that there are no Medicaid liens outstanding against Jolie Tess Dittman.

F. Attorneys' Fees and Costs

Evidence supplied by petitioners documents an expenditure for attorneys' fees and costs. Respondent proffers that petitioners should be awarded attorneys' fees and costs in the amount of \$8,269.06. Petitioners agree. This check will be paid in a lump sum and will be made payable jointly to petitioners and their counsel of record, after petitioners file a statement in compliance with General Order No. 9.

II. Form of the Award

The parties recommend that the compensation provided to Jolie Tess Dittman should be made through a lump sum payments as described below, and request that the special master's decision and the Court's judgment award the following:

- A. A lump sum payment of \$16,566.54 for pain and suffering and past unreimbursable expenses in the form of a check payable to petitioners, Dan and Katie Dittman, Parents and Next Friends of a Minor Child, Jolie Tess Dittman.
- B. A lump sum payment of \$ 8,269.06 for attorneys' fees and costs in the form of a check payable jointly to petitioners, Dan and Katie Dittman, Parents and Next Friends of a Minor Child, Jolie Tess Dittman, and counsel of record.

III. Summary of Recommended Payment Following Judgment

- A. Lump sum paid to petitioners, Dan and Katie Dittman, Parents and Next Friends of a Minor Child, Jolie Tess Dittman, for pain and suffering and past unreimbursable expenses: **\$ 16,566.54**
- B. After compliance with General Order No 9, a lump sum paid jointly to petitioners and their counsel of record for attorneys' fees and costs: **\$ 8,269.06**

Respectfully submitted,

TONY WEST
ASSISTANT ATTORNEY GENERAL

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Dated: February 5, 2010