

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

ELIZABETH MEDINA, Natural Mother and*

Guardian Ad Litem for *

BRANDON BARAHONA, A Minor, *

Petitioner, *

v. *

SECRETARY OF HEALTH *

AND HUMAN SERVICES, *

Respondent. *

No. 09-127V

Special Master Christian J. Moran

Filed: June 18, 2010

Stipulation; influenza (flu) vaccine;
meningococcal vaccine; Guillain-
Barre Syndrome (GBS); Chronic
Inflammatory Demyelinating
Polyneuropathy (CIDP)

UNPUBLISHED DECISION¹

Carol Gallagher, Esq., Gallagher & Gallagher, Somers Point, N.J., for Petitioner;

Traci R. Patton, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On June 15, 2010, the parties filed a joint stipulation concerning the petition for compensation filed by Elizabeth Medina, as mother and guardian ad litem on behalf of her minor son, Brandon Barahona ("Brandon"), and which was filed on March 3, 2009. In her petition, Ms. Medina alleged that the influenza and/or meningococcal vaccines, which are contained in the Vaccine Injury Table, 42 C.F.R. §100.3(a), and which Brandon received on October 30, 2007,

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

caused him to suffer Guillain-Barre Syndrome (“GBS”) or Chronic Inflammatory Demyelinating Polyneuropathy (“CIDP”). Ms. Medina alleges that Brandon experienced the residual effects of this injury for more than six months.

Respondent denies that Brandon’s GBS or CIDP was caused-in-fact by his receipt of the influenza and/or meningococcal vaccines and denies that Brandon suffers any current disabilities that are sequelae of a vaccine-related injury. 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 \$352,500.00, in the form of a check payable to petitioner, as natural mother and guardian ad litem for Brandon Barahona.** This amount represents compensation for all damages, other than past unreimbursable expenses, that would be available under 42 U.S.C. § 300aa-15(a);
- B) **A lump sum of \$3,000.00, in the form of a check payable to petitioner,** for past unreimbursable expenses; and
- C) **A lump sum of \$39,510.55, in the form of a check payable to petitioner and petitioner’s attorney, Carol Gallagher, of Gallagher & Gallagher,** pursuant to 42 U.S.C. § 300aa-15(e), for attorneys’ fees and costs.

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 09-127V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Francina Segbefia, at (202) 357-6358.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

ELIZABETH MEDINA, Natural Mother and
Guardian Ad Litem for BRANDON
BARAHONA, a minor,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 09-127V
Special Master Moran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Brandon Barahona ("Brandon"), 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 Brandon's receipt of the influenza and/or meningococcal vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Brandon received influenza and meningococcal vaccines on October 30, 2007.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Brandon subsequently suffered the injury Guillain-Barré Syndrome ("GBS") or Chronic Inflammatory Demyelinating Polyneuropathy ("CIDP"), which petitioner alleges was caused-in-fact by Brandon's receipt of the influenza and/or meningococcal

vaccines. Petitioner further alleges that Brandon experienced the residual effects of his 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 Brandon's behalf as a result of his condition.

6. Respondent denies that Brandon's GBS or CIDP was caused-in-fact by the influenza and/or meningococcal vaccines and denies that Brandon suffers any current disabilities that 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 \$352,500.00 in the form of a check payable to petitioner, as natural mother and guardian ad litem for Brandon Barahona. This amount represents compensation for all damages, other than past unreimbursable expenses, that would be available under 42 U.S.C. § 300aa-15(a);
- b. A lump sum of \$3,000.00 in the form of a check payable to petitioner. This amount represents compensation for past unreimbursable expenses; and
- c. A lump sum of \$39,510.55, in the form of a check payable to petitioner and petitioner's attorney, Carol Gallagher, of Gallagher & Gallagher, pursuant to 42 U.S.C. § 300aa-15(e), for attorneys' fees and costs.

9. 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.

10. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of Brandon Barahona 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).

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

12. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of Brandon, on behalf of herself, Brandon, and his heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of Brandon resulting from, or alleged to have resulted from, the influenza and meningococcal vaccinations

administered on October 30, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about March 3, 2009, in the United States Court of Federal Claims as petition No. 09-127V.

13. If Brandon should die prior to receiving the payments described in paragraphs 8(a) and 8(b), this agreement shall be considered 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 null and void at the sole discretion of either party.

15. This Stipulation expresses a full and complete 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.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors and assigns as legal representatives of Brandon Barahona.


END OF STIPULATION

Respectfully submitted,


PETITIONER:


ELIZABETH MEDINA

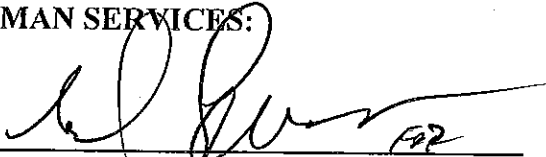
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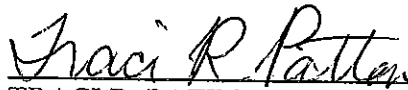
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Dated: 6-15-2010