

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS  
No. 06-286V  
Filed: January 24, 2011**

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SAMUEL CLERVEAUX-JEAN, a  
minor, by and through his mother  
and natural guardian,  
ROSENIE CLERVEAUX-JEAN,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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Joint Stipulation; DTaP;  
hypotonia, developmental delay

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**DECISION ON JOINT STIPULATION<sup>1</sup>**

**Vowell**, Special Master:

Rosenie Clerveaux-Jean filed a petition ["Pet."] for compensation under the National Vaccine Injury Compensation Program<sup>2</sup> on April 7, 2006, on behalf of Samuel Clerveaux-Jean ["Samuel"]. Petitioner alleges that as a result of the diphtheria-tetanus-acellular pertussis ["DTaP"] vaccine Samuel received on April 22, 2003, Samuel suffered injury. See Pet. at 1. Specifically, petitioner alleges that Samuel suffered an acute insult to his central nervous system, which was caused in fact by the DTaP vaccine. Petitioner further alleges that as a result of this injury, Samuel sustained hypotonia and developmental delay. Stipulation, filed January 19, 2011, at ¶¶ 2,4.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

Respondent denies that Samuel's injuries were caused-in-fact by his DTaP vaccine. Stipulation at ¶ 6.

Nevertheless, the parties have agreed to settle the case. On January 19, 2011, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms. Respondent agrees to pay petitioner:

- A lump sum payment of **\$50,000.00** in the form of a check payable to petitioner as guardian/conservator of Samuel's estate; and
- An amount sufficient to purchase the annuity contract described in paragraph 10 of the Stipulation, paid to the life insurance company from which the annuity will be purchased.

These amounts represent compensation for all damages that would be available under § 300aa-15(a).

The special master adopts the parties' stipulation attached hereto, and awards compensation in the amount and on the terms set forth therein. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

  
**Denise K. Vowell**  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

Extra

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF THE SPECIAL MASTERS

RECEIVED & FILED

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OFFICE OF THE CLERK  
U.S. COURT OF FEDERAL CLAIMS

SAMUEL CLERVEAUX-JEAN, a minor, )  
by and through his mother and natural )  
guardian, ROSENIE CLERVEAUX-JEAN, )  
 )  
Petitioner, )  
v. )  
 )  
SECRETARY OF HEALTH )  
AND HUMAN SERVICES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

No. 06-286  
Special Master Vowell

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Samuel Clerveaux-Jean ("Samuel"), 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 Samuel's receipt of the Diphtheria-Tetanus-acellular Pertussis ("DTaP") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Samuel received his second DTaP immunization on April 22, 2003.
3. The vaccine was administered within the United States.
4. Petitioner alleges that within twenty-four hours following receipt of the DTaP vaccine, Samuel suffered an acute insult to his central nervous system, which was caused in fact by the DTaP vaccine. Petitioner further alleges that as a result of this injury, Samuel sustained hypotonia and developmental delay, and that Samuel experienced the 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 behalf of Samuel as a result of his condition.

6. Respondent denies that Samuel suffered an acute insult to his central nervous system that was caused in fact by the DTaP vaccine. Respondent also denies that Samuel sustained hypotonia and developmental delay as a result of the DTaP vaccine. Respondent further denies that Samuel's current disabilities are sequelae of his alleged injury, and that Samuel 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 \$50,000.00 in the form of a check payable to petitioner as guardian/conservator of Samuel's estate; and
- b. An amount sufficient 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").

These amounts represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

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 Samuel Clerveaux-Jean, pursuant to which the Life Insurance Company will agree to make the following payments periodically to petitioner:

- a. Beginning December 24, 2011, \$35,000.00 per year, payable annually for ten years;
- b. Beginning December 24, 2021, \$1,192.13 per month for Samuel's life, increasing at 2.5 % compounded annually from the date payments begin.

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as Samuel is alive at the time that a particular payment is due. Written notice to the Secretary of Health and Human Services and the Life Insurance Company shall be provided within twenty (20) days of Samuel'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 the amounts

awarded pursuant to paragraph 12 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. 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.

13. Petitioner and her 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.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. 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 the benefit of Samuel 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).

16. 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 Samuel'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 Samuel's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Samuel Clerveaux-Jean 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 Samuel Clerveaux-Jean upon submission of written documentation of such appointment to the Secretary.

17. In return for the payments described in paragraphs 8 and 12, petitioner, in her individual capacity and as legal representative of Samuel Clerveaux-Jean, on behalf of herself, Samuel, 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 Samuel resulting from, or alleged to have resulted from, the DTaP vaccination administered on April 22, 2003, as alleged by petitioner in a petition for vaccine compensation filed on or about April 7, 2006, in the United States Court of Federal Claims as petition No. 06-286V.

18. If Samuel 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.

19. 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.

20. 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 otherwise noted in paragraph 12 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.

21. 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.

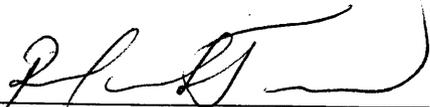
22. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Samuel suffered an injury that was caused in fact by the DTaP vaccine, that his current disabilities are sequelae of his alleged injury, or that Samuel experienced the residual effects of this injury for more than six months.

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

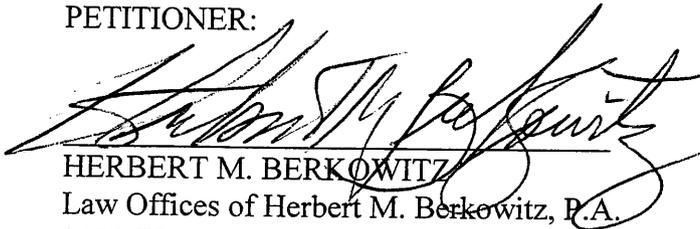


Respectfully submitted,

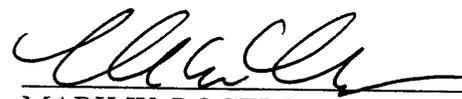
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ROSENIE CLERVEAUX-JEAN

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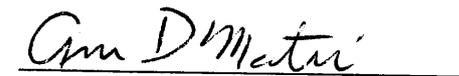
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Dated: January 19, 2011