

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-604V

Filed: March 1, 2013

MARY COOPER,

*

NOT TO BE PUBLISHED

*

Petitioner,

*

v.

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Stipulation; Chronic Inflammatory

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Demyelinating Polyradiculoneuropathy

SECRETARY OF HEALTH

*

(“CIDP”); Influenza Vaccine;

AND HUMAN SERVICES,

*

Tetanus-Diphtheria-acellular Pertussis

*

(“Tdap”) Vaccine

Respondent.

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*

Isaiah Kalinowski, Maglio, Christopher, and Taole, Sarasota, FL, for Petitioner.

Michael Milmo, United States Dep’t of Justice, Washington, DC, for Respondent.

DECISION¹

ZANE, Special Master.

On March 1, 2013, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, Mary Cooper, alleges that she suffered chronic inflammatory demyelinating polyradiculoneuropathy (“CIDP”) that was caused-in-fact by her receipt of Tetanus-Diphtheria-acellular Pertussis (“Tdap”) and influenza (“flu”) vaccines received on October 1, 2008, vaccines that are contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Ms. Cooper also alleges that

¹ Because this decision contains a reasoned explanation for the Special Master’s action in this case, the Special Master intends to post it on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 113 Stat. 2899, 2913 (Dec. 17, 2002). All decisions of the Special Master 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, a party has 14 days to identify and to move to redact 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 redact such material from public access. 42 U.S.C. § 300aa-12 (d) (4); Vaccine Rule 18 (b).

she experienced the residual effects of this injury for more than six months and that she has not otherwise received compensation for such injuries. Petitioner seeks compensation related to her injuries pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to 34.

Respondent denies that the vaccines caused Petitioner's CIDP or any other injury or her current disabilities. Nonetheless, the parties have agreed informally to resolve this matter. Stipulation, Appendix A hereto.

The court hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioner is awarded:

a lump sum of \$125,000.00, 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).

The court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/Daria J. Zane
Daria J. Zane
Special Master

² This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

MARY COOPER,
Petitioner,
v.
SECRETARY OF HEALTH
AND HUMAN SERVICES,
Respondent.

No. 11-604
Special Master Zane
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Mary Cooper, 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 petitioner's receipt of Tetanus-Diphtheria-acellular Pertussis ("Tdap") and influenza ("flu") vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received Tdap and flu vaccines on or about October 1, 2008.
3. The vaccines were administered within the United States.
4. Petitioner alleges that she suffered chronic inflammatory demyelinating polyradiculoneuropathy ("CIDP") as a consequence of the immunizations she received on or about October 1, 2008, and further alleges that she suffered 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 her behalf as a result of her condition.

6. Respondent denies that either the Tdap and/or flu vaccines caused petitioner's CIDP or any other injury and further denies that her current disabilities are a sequela 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 payment:

A lump sum of \$125,000.00 in the form of a check payable to petitioner, representing compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. 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.

10. 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 prepaid basis.

11. Payments made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

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

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors, and 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 United States 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 Tdap and/or flu vaccinations administered on or about October 1, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about September 19, 2011, in the United States Court of Federal Claims as petition No. 11-604V.

14. 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.

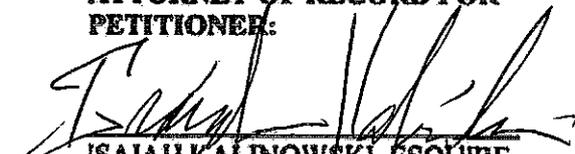
Respectfully submitted,

PETITIONER:



MARY COOPER

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Dated: March 1, 2013