

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 12-411V

Filed: May 9, 2013

ERICA HILL, Natural Mother,
and Guardian for
E.J., a minor,

*
*
*
*
*
*
*
*
*
*
*
*

NOT TO BE PUBLISHED

Petitioner,

Special Master Zane

v.

Stipulation; meningococcal vaccine;
Bell’s palsy; joint stiffness; myalgia;
sensory neuropathy; retinal vasculitis.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Carol Gallagher, Carol L. Gallagher, LLC, Linwood, NJ, for Petitioner
Darryl Wishard, United States Dep’t of Justice, Washington, DC, for Respondent

UNPUBLISHED DECISION¹

On May 8, 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, Erica Hill, on behalf of E.J., alleged that E.J. suffered from jaw pain, bilateral Bell’s palsy, joint stiffness, myalgia, sensory neuropathy, retinal vasculitis, and hypertension that were caused-in-fact by the receipt of the meningococcal vaccine on June 18, 2010, and which vaccine

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 disclosed and made available to the public unless they contain trade secret or commercial or financial information that is privileged and confidential, or medical and similar files the disclosure of which would constitute a clearly 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 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). In the absence of a motion or should the Special Master disagree with the proposed redactions, the decision shall be disclosed in its entirety. Pursuant to Petitioner’s motions filed May 21, 2013, this decision has been modified and certain parts redacted from public access.

is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Ms. Hill also alleges that E.J. experienced the residual effects of this injury for more than six months and that neither Petitioner nor E.J. have otherwise received compensation for such injuries. Petitioner seeks compensation related to E.J.'s injuries pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that the meningococcal vaccine caused E.J.'s claimed injuries or any other injury and denies that E.J.'s current disabilities are sequelae of the alleged vaccine-related injury. Nonetheless, the parties have agreed informally to resolve this matter. Stipulation, Appendix A hereto.

The undersigned 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 \$90,000.00, in the form of a check payable to petitioner, as guardian of the Estate of E.J. 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.

for damages on behalf of Eric as a result of an alleged vaccine-related injury.

6. Respondent denies that the vaccine caused Eric to suffer any of the alleged injuries or any other injuries.

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 \$90,000.00, in the form of a check payable to the petitioner as guardian of Eric's estate, 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 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. § 300aa-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.

§ 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation, and any amount awarded pursuant to paragraph 9 of this Stipulation, 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 attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of Eric, 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian of Eric'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 the appointment of a guardian for Eric's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian of Eric's estate 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 of Eric's estate upon submission of written documentation of such appointment to the Secretary.

14. In return for the payment described in paragraph 8, and any payments that may be made as described in paragraph 9, petitioner, in her individual capacity, and on behalf of Eric, 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, 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 Eric resulting from, or alleged to have resulted from, the meningococcal vaccine administered on June 18, 2010, as alleged by petitioner in a petition for vaccine compensation filed on or about June 25, 2012, in the United States Court of Federal Claims as petition No. 12-411V.

15. If Eric 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.

16. 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.

17. 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 9 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.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the meningococcal vaccine caused Eric to suffer from his alleged injuries or any other injury.

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

heirs, executors, administrators, successors, and/or assigns, as legal representative of Eric.

END OF STIPULATION

Respectfully submitted,

PETITIONER:


ERICA HILL

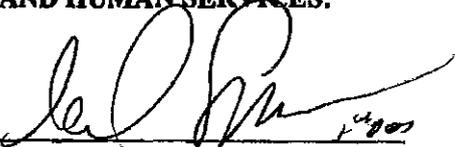
**ATTORNEY OF RECORD FOR
PETITIONER:**


CAROL L. GALLAGHER
Gallagher & Gallagher Law Firm LLC
822 Shore Road
Somers Point, NJ 08244
(609) 926-6450

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


VINCENT J. MATANOSKI
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**


VITO CASERTA, M.D., M.P.H.
Acting Director, Division of Vaccine
Injury Compensation (DVIC)
Director, Countermeasures Injury
Compensation Program (CICP)
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 11C-26
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


DARRYL R. WISHARD
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4357

Dated: 5/8/13