

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: November 2, 2005)

NARCEDALIA ORTIZ,)	
as legal representative of her minor child,)	
NELSON VEGA CARACHURE,)	
)	
Petitioner,)	
)	
v.)	No. 03-2349V
)	
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION DIRECTING ENTRY OF JUDGMENT¹

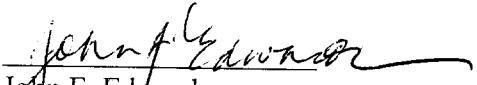
On November 1, 2005, the clerk of court filed by the special master's leave a stipulation that the parties submitted on October 26, 2005.² The special master has reviewed thoroughly the stipulation. He adopts completely the stipulation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the stipulation in petitioner's favor.³

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

² The format of the signature for petitioner's counsel did not comply with requirements of Vaccine Rule 14(a).

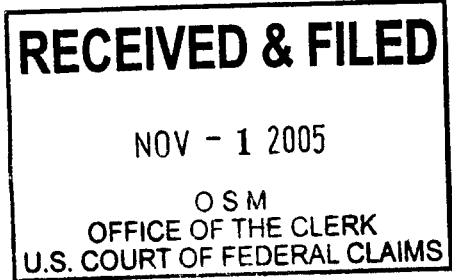
³ Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), petitioner may expedite payment by filing an election to accept the judgment.

The clerk of court shall send petitioner's copy of this decision to petitioner by overnight express delivery.


John F. Edwards
Special Master

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS



NARCEDALIA ORTIZ, legal)
representative of a minor child,)
NELSON VEGA CARACHURE,)
)
Petitioner,)
v.)
)
SECRETARY OF HEALTH)
AND HUMAN SERVICES,)
)
Respondent.)
)

No. 03-2349V
Special Master Edwards

by leave of the Special Master

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. On October 8, 2003, Narcedalia Ortiz (“petitioner”), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, *as amended* (the “Vaccine Program”), on behalf of her minor son, Nelson Vega Carachure (“Nelson”). The petition seeks compensation for injuries allegedly related to Nelson's receipt of measles-mumps-rubella (“MMR”), diphtheria-tetanus-acellular pertussis (“DTaP”), and haemophilus influenzae type B (“HIB”) vaccines. MMR, DTaP, and HIB vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Nelson received MMR, DTaP, and HIB vaccines on September 28, 2000.
3. The vaccines were administered within the United States.
4. Petitioner claims that approximately 14 days after Nelson’s vaccinations, he experienced the onset of tremors and ataxia, and that these symptoms were caused-in-fact by the

vaccinations. Nelson was hospitalized for 18 days and diagnosed with cerebellar ataxia. Petitioner asserts that Nelson's treating neurologist attributed the ataxia to the vaccinations. Petitioner claims that Nelson currently suffers from residual neurological effects from his putative vaccine-related injury, and will require medication for life.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on Nelson's behalf as a result of his alleged vaccine-related condition.

6. Respondent denies that petitioner has established, by a preponderance of the evidence, that Nelson's injuries were caused by the vaccines he received.

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 \$40,011.97, for Nelson's past and future pain and suffering, in the form of a check payable to petitioner as guardian/conservator of Nelson's estate; and
- b. A lump sum of \$3,525.60, for first year medical expenses, in the form of a check payable to petitioner as guardian/conservator of Nelson's estate; and
- c. A lump sum of \$39,136.83, in the form of a check jointly payable to petitioner as guardian/conservator of Nelson's estate and First State Health Plan (Attn: Alicia Grabczewski), 11 Reads Way, New Castle, DE 19720, in full satisfaction of a Medicaid lien in that amount; and
- d. A lump sum of \$22,770.34, in the form of a check jointly payable to petitioner as guardian/conservator of Nelson's estate and Delaware Health and Social Services, Third

Party Liability (Attn: June Hales), 1901 N. DuPont Highway, New Castle, DE 19720, in full satisfaction of a Medicaid lien in that amount; and

e. A lump sum of \$112.40, in the form of a check jointly payable to petitioner as guardian/conservator of Nelson's estate and Recovery Management Systems (Attn: Victor Womack), 3514 N. 24th Street, Phoenix, Az 85016; and

f. 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").

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 Nelson, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for the following item of compensation:

- a. For Nelson's future unreimbursable medical expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$3,525.60, to be paid for the remainder of Nelson's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may

be provided to petitioner in monthly, quarterly, annual or other installments. The “annual amounts” set forth above describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment. Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as Nelson is alive at the time that a particular payment is due. Petitioner shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Nelson’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 special master shall preside over further proceedings to award reasonable attorney’s fees and costs incurred in proceeding upon this petition.

13. 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.

14. 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 (either immediately or as part of the annuity contract), will be used solely for the benefit of Nelson 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).

15. Petitioner represents that she is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Nelson's estate under the laws of the State of Delaware. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Nelson's estate.

16. In return for the payments described in paragraphs 8 and 12, petitioner in her individual capacity, and as the legal representative of Nelson, on behalf of herself, Nelson, 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 Nelson resulting from, or alleged to have resulted from, the MMR, DTaP, and HIB vaccinations administered on September 28, 2000, as alleged by petitioner in a petition for vaccine compensation filed on or about October 8, 2003, in the United States Court of Federal Claims as

petition No. 03-2349V.

17. In the event Nelson should die prior to the Secretary making any or all of the payments described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

18. In the event the special master fails to issue a decision in complete conformity with the terms of this Stipulation or in the event the Court of Federal Claims fails to enter judgment in 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.

19. This Stipulation expresses a full and complete 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.

20. All rights and obligations of petitioner hereunder shall apply equally to her successors and assigns as legal representatives of Nelson Vega Carachure.

END OF STIPULATION

Respectfully submitted,


PETITIONER:


MARCEDALIA ORTIZ

**ATTORNEY OF RECORD FOR
PETITIONER:**


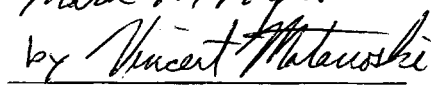

VIVIAN L. RAPOSELLI, ESQ.
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(302) 652-8711

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

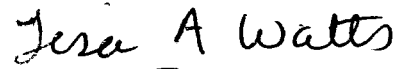
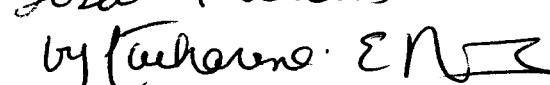

GEOFFREY EVANS, M.D.
Acting Director, Division of
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Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Room 11C-26
Rockville, MD. 20857

Dated: Oct. 26, 2005

**AUTHORIZED REPRESENTATIVE
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