

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-98V

Filed: May 22, 2008

Not for publication

MARY GOLDSBERRY on *
behalf of her minor child *
EVELYN GOLDSBERRY *

Petitioners, *

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Christopher J. Rodgers, Salt Lake City, UT, for petitioners.
Rebecca J. Trinrud, Washington, DC, for respondent.

Damages decision based on stipulation; ATM following DTaP, Hib, IPV, pneumococcal, and Hep B vaccines

DECISION AWARDING DAMAGES¹

On May 20, 2008, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleges that Evelyn Goldsberry suffered from Acute Transverse Myelitis (“ATM”) resulting from her receipt of DAPTACEL (“DTaP”), haemophilus influenzae Type B (“Hib”), enhanced inactivated poliovirus (“IPV”), pneumococcal, and hepatitis B (“Hep B”) vaccines. Respondent denies that Evelyn’s alleged injury was vaccine-related, and denies that she suffers any current disabilities that are sequelae of her alleged injury. Nonetheless, the parties agreed to resolve this matter informally.

The court hereby adopts the parties’ stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a lump sum of **\$125,000.00** in the form of a check made payable to Mary

¹ The undersigned intends 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, 116 Stat. 2899, 2913 (Dec. 17, 2002). 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.

Goldsberry, as Conservator for Evelyn Goldsberry, a minor. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: May 22, 2008

/s/ Laura D. Millman

Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

Hep B, on October 7, 2003. Evelyn received her second series of vaccinations, including DTaP, IPV, Hib and pneumococcal, on December 12, 2003. Evelyn received her third series of vaccinations, including DTaP, Hib and IPV, on February 13, 2004.

3. The vaccines were administered within the United States.

4. Petitioner alleges that, approximately 13 days after her third series of vaccinations, Evelyn began to experience the first symptom or manifestation of the onset of acute transverse myelitis ("ATM"), which petitioner alleges was caused-in-fact by the separate or combined effects of the vaccines she received. Petitioner further alleges that Evelyn has experienced the residual effects of her ATM 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 Evelyn as a result of her condition.

6. Respondent denies that Evelyn's ATM and alleged residual effects were caused-in-fact by any of the vaccines she 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 lump sum of \$125,000.00 in the form of a check payable to Mary Goldsberry, as Conservator for Evelyn Goldsberry, a minor. This amount represents 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. Payments made pursuant to paragraph 8, and any amounts 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.

11. 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 Evelyn 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).

12. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian of Evelyn's estate under the laws of the State of Utah. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian of Evelyn's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian of the estate of Evelyn Goldsberry at the time a payment pursuant to this Stipulation is made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian of the estate of Evelyn Goldsberry upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of Evelyn, on behalf of herself, Evelyn and her 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, Evelyn resulting from, or alleged to have resulted from, the DTaP, Hib, IPV, pneumococcal and Hep B vaccinations administered on October 7, 2003, December 12, 2003, and February 13, 2004, as alleged by petitioner in a petition for vaccine compensation filed on or about February 9, 2007, in the United States Court of Federal Claims as petition No. 07-98V.

14. If Evelyn should die prior to the petitioner receiving the payment 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.

15. If 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 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.

16. This Stipulation expresses a full and complete settlement of liability and damages claimed in this matter by petitioner under the National Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of

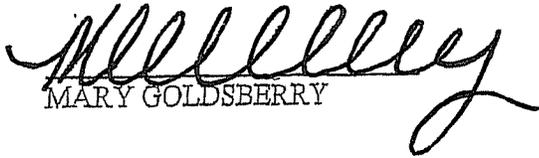
the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, successors and/or assigns as legal representatives of Evelyn Goldsberry.

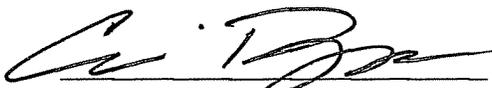
END OF STIPULATION

Respectfully submitted,

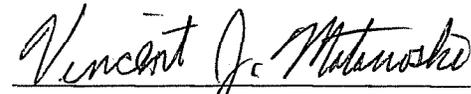
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MARY GOLDSBERRY

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Dated: May 20, 2008