

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No.

(E-Filed:)

* * * * *

as Parents and Legal Representatives of their
minor son,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

Ramon Rodriguez, III, Richmond, VA, for Petitioner

Voris E. Johnson, Washington, DC, for respondent

UNPUBLISHED

Special Master
Hamilton-Fieldman

Varicella Vaccine; Fever Induced
Seizures and Hypoxic Ischemic
Encephalopathy; Respondent’s
Concession; Finding of
Entitlement; Damages Decision
Based on Proffer

DECISION AWARDING DAMAGES¹

On , Petitioners, , filed a petition on behalf
of their minor child seeking compensation under the National Vaccine Injury
Compensation Program (“the Vaccine Program”) for a vaccine-related injury.²

¹ 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)), requires that the court post this
decision on its website. In accordance with Vaccine Rule 18(b), Petitioner has 14 days to
identify and move to delete medical or other information, that satisfies the criteria in §
300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction
must include a proposed redacted decision. If, upon review, the undersigned agrees that
the identified material fits within the requirements of that provision, the undersigned will
delete such material from public access.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the
National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755,
codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (“Vaccine Act” or “Act”). All
citations in this decision to individual sections of the Act are to 42 U.S.C.A. § 300aa.

Respondent has conceded that Petitioners are entitled to compensation due to Petitioners having established a prima facie case of causation in fact that varicella vaccination is responsible for his current neurological condition.³

Informed by Respondent's concession that an award of damages is appropriate, the undersigned finds that Petitioners are entitled to compensation under the Vaccine Program.

On Respondent filed a Proffer detailing Respondent's recommendations of damages (Proffer). In the Proffer Respondent represented that Petitioners had agreed to all of the terms set forth therein. Based on the record as a whole, the undersigned finds the Proffer reasonable and that Petitioners are entitled to an award as stated in the Proffer. Pursuant to the terms stated in the attached Proffer, the court awards Petitioners:

1. A lump sum payment of **\$1,272.772.80**, representing compensation for lost future earnings (\$642,336.73), pain and suffering (\$232,319.57) and life care expenses for Year One (\$398,116.50), in the form of a check payable to Petitioners as guardians/conservators of , for the benefit of . No payments shall be made until Petitioners provide Respondent with documentation establishing that they have been appointed as the guardians/conservators of estate. If Petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of , any such payment shall be made to the party or parties appointed by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of upon submission of written documentation of such appointment to the Secretary;
2. A lump sum payment of **\$27,725.37**, representing compensation for past un-reimbursable expenses, payable to and , Petitioners;

³ In Respondent's Amended Rule 4(c) Report filed (ECF No. 14), Respondent only conceded that the varicella vaccine caused fever. However, Respondent did acknowledge that in case, the fever caused his atypical febrile seizure with aspiration, and subsequent hypoxic ischemic encephalopathy and those injuries led to residual neurologic condition of seizures, quadraparesis, and severe developmental delays.

3. A lump sum payment of **\$43,134.67**, representing compensation satisfaction of the State of _____ Medicaid lien, payable jointly to Petitioners and:

Petitioners agree to endorse this payment to the State of _____

4. An amount sufficient to purchase an annuity contract(s), subject to the conditions described in Section II. D. of the attached Proffer, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab A [attached hereto as Appendix A] paid to the life insurance company(ies) from which the annuity(ies) will be purchased. Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent years shall be provided through Respondent's purchase of an annuity(ies), which annuity(ies) shall make payments directly to Petitioners as guardians/conservators of the estate of _____, only so long as _____ is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to Petitioners in monthly, quarterly, annual or other installments. The "annual amounts" set forth in the chart at Tab A [attached hereto as Appendix A] describe only the total yearly sum to be paid to Petitioners and do not require that the payment be made in one annual installment.

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.⁴

IT IS SO ORDERED.

s/Lisa Hamilton-Fieldman
Lisa Hamilton-Fieldman
Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.