

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 10-639V

Filed: April 26, 2016

\* \* \* \* \*  
M.R., a minor, by and through his natural  
parents and guardians, ANN ROBERTS,  
and DUSTIN ROBERTS,<sup>1</sup>

Petitioners,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

\* \* \* \* \*

Lawrence G. Michel, Kennedy, Berkeley, et al., Salina, KS, for petitioner.

Alexis B. Babcock, U.S. Department of Justice, Washington, D.C., for respondent.

UNPUBLISHED

Chief Special Master Dorsey

Decision on Proffer; Damages;  
Diphtheria-Tetanus-Acellular-  
Pertussis (DTaP) Vaccine;  
Haemophilus Influenza Type B (Hib)  
Vaccine; Measles Mumps Rubella  
(MMR) Vaccine; Varicella Vaccine;  
Prevnam Vaccine; Seizure Disorder

### **DECISION AWARDING DAMAGES<sup>2</sup>**

On September 23, 2010, Ann Roberts (“petitioner”), as the parent and natural guardian of M.R., a minor, filed a petition pursuant to the National Vaccine Injury Compensation Program.<sup>3</sup> 42 U.S.C. §§ 300aa-1 to 34 (2012). Petitioner alleged that diphtheria-tetanus-acellular-pertussis (“DTaP”), measles-mumps-rubella (“MMR”), haemophilus influenza type B (“Hib”), and varicella vaccinations on February 21, 2008, and a Prevnam vaccination on March 17, 2008,

<sup>1</sup> The case caption has been changed pursuant to the May 4, 2016, Order granting petitioner’s motion to amend the case caption to include M.R.’s father, Dustin Roberts.

<sup>2</sup> Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this ruling on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b).

<sup>3</sup> 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 (2012) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

caused M.R. to suffer from a seizure disorder. Petition at 1-2. The undersigned issued a Ruling on Entitlement on September 24, 2014, finding petitioner entitled to compensation based on an injury caused-in-fact by a covered vaccine.

On April 22, 2016, respondent filed a Proffer on an award of compensation, indicating that petitioner has agreed to compensation as follows: \$160,000.00 in actual and projected pain and suffering; \$45,732.29 in past unreimbursable expenses; and \$8,816.20 to satisfy the State of Kansas Medicaid lien. Proffer at ¶ IA-D.

Pursuant to the terms in the Proffer, attached hereto as Appendix A, **the undersigned awards petitioner the following compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a):**

- 1. A lump sum payment of \$160,000.00, representing compensation for pain and suffering, in the form of a check payable to petitioner as guardian/conservator of M.R., for the benefit of M.R.;**
- 2. A lump sum payment of \$45,732.29 in the form of a check payable to petitioner, representing compensation for past unreimbursed expenses; and**
- 3. A lump sum payment of \$8,816.20, representing compensation for satisfaction of the State of Kansas Medicaid lien, payable jointly to petitioner and**

**Kansas Medicaid Subrogation  
6021 S.W. 29<sup>th</sup> Street  
Suite A, #373  
Topeka, KS 66614  
Attn: Nikki Thyfault**

The clerk of the court shall enter judgment in accordance herewith.<sup>4</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

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<sup>4</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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 natural parent and guardian, ANN ROBERTS,  
 Petitioner,  
 v.  
 SECRETARY OF HEALTH AND  
 HUMAN SERVICES,  
 Respondent.

No. 10-639V  
 Chief Special Master Dorsey

## **I. Items of Compensation**

Respondent proffers that M.R. should be awarded \$160,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

Petitioner has provided evidence of past unreimbursable expenses related to M.R.'s vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$45,732.29. Petitioner agrees.

The parties agree that based upon the evidence of record, M.R.'s vaccine-related injury has not impaired his earning capacity. Therefore, respondent proffers that petitioner should be awarded no lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

D. Medicaid Lien

Respondent proffers that M.R. should be awarded funds to satisfy the State of Kansas lien in the amount of \$8,816.20, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Kansas may have against any individual as a result of any Medicaid payments the State of Kansas has made to or on behalf of M.R. from the date of his eligibility for benefits through the date of judgment in this case as a result of his vaccine-related injury suffered on or about February 21, 2008, under Title XIX of the Social Security Act. Petitioner agrees.

**II. Form of the Award**

The parties recommend that compensation provided to petitioner should be made through a lump sum payment as described below and request that the Chief Special Master's decision and the Court's judgment award the following:<sup>1</sup>

A. A lump sum payment of \$160,000.00, representing compensation for pain and suffering, in the form of a check payable to petitioner as guardian/conservator of M.R., for the benefit of M.R.. No payments shall be made until petitioner provides respondent with documentation establishing that she has been appointed as the guardian/conservator of M.R.'s estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of M.R., any such payment shall be made to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of M.R. upon submission of written documentation of such appointment to the Secretary;

B. A lump sum payment of \$45,732.29 payable to petitioner, representing compensation for past unreimbursed expenses;

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<sup>1</sup> Should M.R. die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses and future pain and suffering.

C. A lump sum payment of \$8,816.20, representing compensation for satisfaction of the State of Kansas Medicaid lien, payable jointly to petitioner and

Kansas Medicaid Subrogation  
6021 S.W. 29<sup>th</sup> Street  
Suite A, #373  
Topeka, KS 66614  
Attn: Nikki Thyfault

Petitioner agrees to endorse this payment to the State of Kansas.

**III. Summary of Recommended Payments Following Judgment**

A.	Lump sum paid to petitioner as court-appointed guardian/conservator of M.R.'s estate:	\$ 160,000.00
B.	Medicaid Lien:	\$ 8,816.20
C.	Past unreimbursed expenses	\$ 45,732.29

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA  
Director  
Torts Branch, Civil Division

VINCENT J. MATANOSKI  
Deputy Director  
Tort Branch, Civil Division

LINDA S. RENZI  
Senior Trial Counsel  
Torts Branch, Civil Division

s/ Alexis B. Babcock  
ALEXIS B. BABCOCK  
Senior Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Telephone: (202) 616-7678

Dated: April 22, 2016