

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 13-705V

Filed: December 9, 2016

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UNPUBLISHED

CHARLENE CARROCCIA GUADAGNO *
as Administratrix of the Estate of Salvatore *
J. Carroccia, *

Petitioner, *

Special Master Gowen

v. *

Joint Stipulation on Damages;
Influenza (“Flu”) Vaccine; Acute
Disseminated Encephalomyelitis
(“ADEM”)

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

* * * * *

Michael J. Williams, Cellino and Barnes, P.C., Buffalo, NY, for petitioner.

Claudia B. Gangi, United States Department of Justice, Washington, DC, for respondent.

DECISION ON JOINT STIPULATION¹

On September 20, 2013, Salvatore Carroccia filed a petition pursuant to the National Vaccine Injury Compensation Program.² 42 U.S.C. §§ 300aa-10 to 34 (2012). Upon his death, Charlene Carroccia Guadagno (“petitioner”), as Administratrix of his estate, was substituted as petitioner. Petitioner alleges that as a result of receiving an influenza (“flu”) vaccine on September 20, 2010, Mr. Carroccia developed acute disseminated encephalomyelitis (“ADEM”), and that Mr. Carroccia’s death was the sequela of his alleged vaccine-related injury. Petition at Preamble.

¹ 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).

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 (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.

On December 8, 2016, the parties filed a stipulation in which they state that a decision should be entered awarding compensation. Respondent denies that the flu vaccine caused Mr. Carroccia's alleged ADEM, any other injury, or his death. Stipulation at ¶ 6. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

The parties stipulate that petitioner shall receive the following in compensation:

- a. **A lump sum of \$450,000.00 in the form of a check payable to petitioner as Administratrix of the estate of Salvatore J. Carroccia. This amount represents compensation for all remaining damages that would be available under 42 U.S.C. § 300aa-15(a).**

Id. at ¶ 8.

The undersigned approves the requested amount for petitioner's compensation. Accordingly, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

s/Thomas L. Gowen
Thomas L. Gowen
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

CHARLENE CARROCCIA GUADAGNO,
as Administratrix of the Estate of
SALVATORE CARROCCIA,

V.

Respondent.

STIPULATION

1. Salvatore J. Carroccia ("Mr. Carroccia"), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). Upon his death, Charlene Carroccia Guadagno ("petitioner"), as Administratrix of his estate, was substituted as petitioner. The petition seeks compensation for injuries and death allegedly related to Mr. Carroccia's receipt of an influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).

4. Petitioner alleges that as a result of receiving the flu vaccine, Mr. Carroccia suffered acute disseminated encephalomyelitis ("ADEM"). Mr. Carroccia passed away on January 18,

2014. Petitioner further alleges that Mr. Carroccia's death was the sequela of his alleged vaccine-related injury.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Mr. Carroccia as a result of his alleged condition or his death.

6. Respondent denies that the flu vaccine caused Mr. Carroccia's alleged ADEM, any other injury, or his death.

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 \$450,000.00 in the form of a check payable to petitioner as Administratrix of the estate of Salvatore J. Carroccia. 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. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable

under 42 U.S.C. § 300aa-15(g), including 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 entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 of this Stipulation, and any amount awarded pursuant to paragraph 9, will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the Administratrix of the Estate of Salvatore J. Carroccia under the laws of the State of New York. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as the Administratrix of the Estate of Salvatore J. Carroccia. If petitioner is not authorized by a court of competent jurisdiction to serve as the Administratrix of the Estate of Salvatore J. Carroccia 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 Administrator of the Estate of Salvatore J. Carroccia upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraph 8, and any amount awarded pursuant to paragraph 9, petitioner, in her individual capacity, and as the Administratrix of the Estate of Salvatore J. Carroccia, on behalf of Mr. Carroccia's 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 or 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. § 300 aa-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 Mr. Carroccia resulting from, or alleged to have resulted from, the flu vaccine administered on September 20, 2010, as alleged in a Petition filed on September 20, 2013, in the United States Court of Federal Claims as petition No. 13-705V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the United States 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.

15. 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 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused Mr. Carroccia's alleged ADEM or any other injury or his death.

17. All rights and obligations of petitioner in her capacity as the Administratrix of the Estate of Salvatore J. Carroccia shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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Respectfully submitted,


PETITIONER:


CHARLENE CARROCCIA GUADAGNO

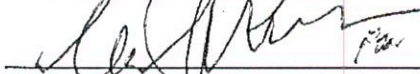
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