

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-969V

Filed: October 19, 2016

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ROGER NOBLETT,

*

UNPUBLISHED

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Petitioner,

*

Special Master Hamilton-Fieldman

*

v.

*

Joint Stipulation on Damages;

*

Influenza (“Flu”) Vaccine; Guillain

SECRETARY OF HEALTH

*

Barré Syndrome (“GBS”).

AND HUMAN SERVICES,

*

*

Respondent.

*

* * * * *

Amber D. Wilson, Maglio Christopher & Toale, PA, for Petitioner.

Lara A. Englund, United States Department of Justice, Washington, DC, for Respondent.

DECISION¹

On October 9, 2014, Roger Noblett (“Petitioner”) petitioned for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (2012). Petitioner alleged that the administration of the Influenza (“Flu”) vaccine, on September 18, 2013, caused him to develop Guillain-Barré Syndrome (“GBS”).

The parties recently filed a stipulation, stating that a decision should be entered awarding compensation. Respondent denies that the Flu vaccine is the cause of Petitioner’s alleged GBS or any other injury. Nevertheless, the parties agree to the attached joint stipulation. The

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 purposes espoused in the E-Government Act of 2002. *See* 44 U.S.C. § 3501 (2012). 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).

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 to the following vaccine compensation payments:

- a. A lump sum of \$420,000.00, in the form of a check payable to petitioner.
- b. A lump sum of \$95,262.64, which amount represents reimbursement of a lien for services rendered on behalf of Roger Noblett, in the form of a check payable jointly to Roger Noblett and

Arkansas Medicaid
Arkansas Department of Human Services
Division of Medical Services
ATTN: Third Party Liability
P.O. Box 1437, Slot S296
Little Rock, Arkansas 72203-1437
Case #: 155820

Petitioner agrees to endorse this check to Arkansas Medicaid.

- c. 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”).

See Stipulation at 2, ECF No. 45. Paragraph 10 specifies that, pursuant to the annuity contract, “the Life Insurance Company will agree to make payments periodically to Roger Noblett” in the amount of “\$3,550.00 per month for life only.” Id. at 3. The parties further stipulate that these provisions represent compensation for all damages under 42 U.S.C. § 300aa-15(a). See id. at 2-3.

The undersigned approves the requested amount for Petitioner’s compensation. Accordingly, an award should be made consistent with the stipulation.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties’ stipulation.²

² Entry of judgment is expedited by the parties’ joint filing of notice renouncing the right to seek review. Vaccine Rule 11(a).

IT IS SO ORDERED.

s/ Lisa Hamilton-Fieldman

Lisa Hamilton-Fieldman

Special Master

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

ROGER NOBLETT,)	
)	
Petitioner,)	
)	
v.)	No. 14-969V
)	Special Master Lisa Hamilton-Fieldman
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner Roger Noblett ("petitioner") filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of the influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received a flu vaccine on or about October 16, 2013.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the flu vaccine caused him to develop Guillain-Barre Syndrome ("GBS") and that he experienced residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his condition.
6. Respondent denies that the flu vaccine is the cause of petitioner's GBS or any other injury or his current condition.

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 \$420,000.00, in the form of a check payable to petitioner.
- b. A lump sum of \$95,262.64, which amount represents reimbursement of a lien for services rendered on behalf of Roger Noblett, in the form of a check payable jointly to Roger Noblett and

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Petitioner agrees to endorse this check to Arkansas Medicaid.

The amount set forth in paragraph 8.a. and b. represents compensation for all damages under 42 U.S.C. § 300aa-15(a), except as set forth in paragraphs 8.c. and 10.a.

- c. An amount sufficient to purchase the annuity contract described in paragraph 10.a. 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 \$250,000,000.00 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 Roger Noblett, pursuant to which the Life Insurance Company will agree to make payments periodically to Roger Noblett for all remaining damages available under 42 U.S.C. § 300aa-15(a), as follows:

Beginning as soon as practicable after the date of judgment, \$3,550.00 per month for life only.

The payments provided for in this paragraph 10 shall be made as set forth above. The petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as he, Roger Noblett, is alive at the time that a particular payment is due. Written notice to the Secretary of Health and Human Services and the Life Insurance Company shall be provided within twenty (20) days of Roger Noblett'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 parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

13. Petitioner and his 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.

14. 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.

15. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner 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).

16. In return for the payments described in paragraphs 8 and 12, petitioner, in his individual capacity, and on behalf of his 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. § 300aa-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 petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on October 16, 2013, as alleged by petitioner in a petition for vaccine compensation filed on or about October 9, 2014, in the United States Court of Federal Claims as petition No. 14-969V.

17. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

18. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if 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 voidable at the sole discretion of either party.

19. 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 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. 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, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

20. Petitioner hereby authorizes respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

21. 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 petitioner's GBS or any other injury or his current condition.

22. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.


END OF STIPULATION

Respectfully submitted,

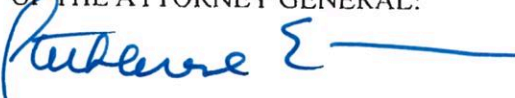
PETITIONER:


ROGER NOBLETT


ATTORNEY OF RECORD FOR
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Dated: 10/13/16