

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1293V

Filed: August 1, 2016

* * * * *		UNPUBLISHED
ANA YURICEK, as Administratrix of the	*	
Estate of JEREMY YURICEK, Deceased,	*	
and ANA YURICEK, Individually,	*	
	*	Special Master Hamilton-Fieldman
Petitioner,	*	
	*	
v.	*	Joint Stipulation on Damages;
	*	Influenza (“Flu”) Vaccine; Acute
	*	Disseminated Encephalomyelitis
SECRETARY OF HEALTH	*	(“ADEM”).
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
* * * * *		

Seth D. Bader, Bloomberg, Steinberg, & Bader, New York, NY, for Petitioner.

Gordon Shemin, United States Department of Justice, Washington, DC, for Respondent.

DECISION¹

On October 30, 2015, Ana Yuricek (“Petitioner”), on behalf of herself and as administratrix of the estate of Jeremy Yuricek (“Mr. Yuricek”), 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 October 4, 2013, caused Mr. Yuricek to develop acute disseminated encephalomyelitis (“ADEM”), resulting in his death.

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).

On August 1, 2016, the parties 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 ADEM, death, or any other injury. 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 "a lump sum of \$405,046.04 in the form of a check payable to petitioner as Legal Representative of the Estate of Jeremy Yuricek." Appendix A at 2, ECF No. 24. They also specify that this "amount represents compensation for all remaining damages that would be available under 42 U.S.C. § 300aa-15(a)." *Id.*

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

IT IS SO ORDERED.

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

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

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

6. Respondent denies that Mr. Yuricek suffered any injury as a result of the flu vaccine administered on or about October 4, 2013, and denies that Mr. Yuricek's death was a sequela of his allegedly vaccine-related ADEM.

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 \$405,046.04 in the form of a check payable to petitioner as Legal Representative of the Estate of Jeremy Yuricek. This amount represents compensation for all remaining 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 of this Stipulation, and any amount 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the legal representative of Mr. Yuricek's estate under the laws of the State of New York. No payment pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as the legal representative of Mr. Yuricek's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as the legal representative of Mr. Yuricek's estate 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 the legal representative of the Estate of Jeremy Yuricek upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and as the legal representative of Mr. Yuricek's estate, on her own behalf, and on behalf of the Estate and Mr. Yuricek's heirs, executors, administrators, successors and/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 Mr. Yuricek resulting from, or alleged to have resulted from, the flu vaccine administered on or about October 4, 2013 as alleged in a petition for vaccine compensation filed on or about October 30, 2015, in the United States Court of Federal Claims as petition No. 15-1293V.

13. 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.

14. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, 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. 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.

15. 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. Yuricek's alleged ADEM or any other injury or death.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of the estate of Mr. Yuricek.

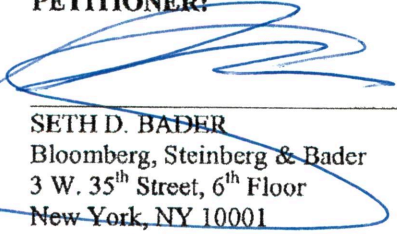
END OF STIPULATION

Respectfully submitted,

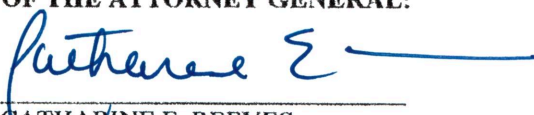
PETITIONER:


ANA YURICEK

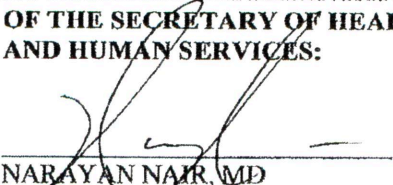
**ATTORNEY OF RECORD FOR
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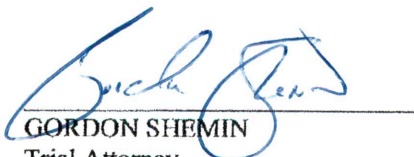
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Dated: August 1, 2016