

ORIGINAL

REISSUED FOR PUBLICATION

JAN 10 2017

OSM

U.S. COURT OF FEDERAL CLAIMS

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-407V

Originally Filed: January 5, 2017

Refiled in Redacted Form: January 10, 2017

Not for Publication

FILED

JAN 10 2017

U.S. COURT OF
FEDERAL CLAIMS

S.B.,

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Petitioner,

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Damages and costs decision based
on stipulation; Tetanus, diphtheria,
and acellular pertussis ("Tdap")
vaccine; shoulder injury related to
vaccine administration ("SIRVA")

v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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S.B., Chicago, IL, *pro se*.

Debra A. Filteau Begley, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES AND LITIGATION COSTS¹

On January 4, 2017, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioner received Tetanus, diphtheria, and acellular pertussis ("Tdap") vaccine on July 1, 2014. Petitioner alleges that her receipt of the Tdap vaccine caused her to suffer a shoulder injury related to vaccine administration ("SIRVA"). Petitioner further alleges that she experienced the residual effects of this injury for more than six months. Respondent denies that petitioner's SIRVA, or any other injury, was caused by her Tdap vaccination. Nonetheless, the parties agreed to resolve this matter informally.

¹ When this decision was originally filed the undersigned advised her intent to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner filed a timely motion to redact certain information. This decision is being reissued without petitioner's full name. The stipulation attached to this decision has also been redacted to remove petitioner's name, signature, and address. Except for those changes and this footnote, no other substantive changes have been made. This decision will be posted on the court's website with no further opportunity to move for redaction.

The court finds the terms of the stipulation to be reasonable, adopts the parties' stipulation, and awards compensation in the amount and on the terms set forth in the stipulation. Pursuant to the attached stipulation, the court awards \$70,000.00 for reimbursement for all damages that would be available under 42 U.S.C. § 300aa-15(a) (2012).

The parties have also agreed on an appropriate amount for litigation costs in this case. Petitioner requests \$704.37 in costs. Respondent does not object to this amount. The undersigned finds this amount to be reasonable.

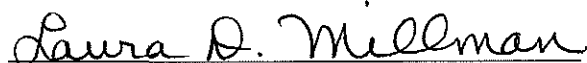
Accordingly, the court awards:

- a. a lump sum of **\$70,000.00**, representing compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). The award shall be in the form of a check made payable to petitioner in the amount of **\$70,000.00**; and
- b. a lump sum of **\$704.37**, representing reimbursement for petitioner's litigation costs. The award shall be in the form of a check made payable to petitioner in the amount of **\$704.37**.

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.²

IT IS SO ORDERED.

Dated: January 10, 2017



Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party, either separately or jointly, filing a notice renouncing the right to seek review.


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OSM
U.S. COURT OF
FEDERAL CLAIMS

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


Petitioner,
v.
SECRETARY OF HEALTH
AND HUMAN SERVICES,
Respondent.

No. 16-407V
SPECIAL MASTER
LAURA D. MILLMAN

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STIPULATION

United States Court of Appeals
For The Federal Circuit

The parties hereby stipulate to the following matters:

1. 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 Tetanus, diphtheria, and acellular pertussis ("Tdap") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received a Tdap immunization on July 1, 2014.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she suffered a shoulder injury related to vaccine administration ("SIRVA") that was caused-in-fact by her Tdap vaccination and that she has suffered the 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 on her behalf as a result of her condition.

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6. Respondent denies that petitioner's alleged SIRVA, or any other injury, was caused-in-fact by her Tdap vaccination.

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 \$70,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a), and
- b. A lump sum of \$704.37 in the form of a check payable to petitioner, for litigation costs available under 42 U.S.C. § 300aa-15(e).

9. Petitioner represents that she has 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.

10. Payments made pursuant to paragraph 8 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. The parties further agree and stipulate that, except for any award for litigation costs, 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).

12. In return for the payments described in paragraph 8, petitioner, in her individual capacity, and on behalf of her 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, her Tdap vaccination administered on July 1, 2014, as alleged by petitioner in a petition for vaccine compensation filed on or about March 28, 2016, in the United States Court of Federal Claims as petition No. 16-407V.

13. 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.

14. 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.

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 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that petitioner's alleged SIRVA, or any other condition, was caused-in-fact by her Tdap vaccine.

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

END OF STIPULATION

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Respectfully submitted,

PETITIONER:



Pro se

AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:

CATHARINE E. REEVES
Acting Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

AUTHORIZED REPRESENTATIVE OF
THE SECRETARY OF HEALTH AND
HUMAN SERVICES:

NARAYAN NAIR, M.D.
Director, Division of Injury
Compensation Programs
Healthcare Systems Bureau
Health Resources and Services Administration
U.S. Department of Health and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 08N146B
Rockville, MD 20857

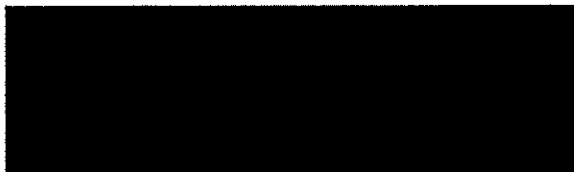
ATTORNEY OF RECORD FOR
RESPONDENT:

DEBRA A. FILTEAU BEGLEY
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616 - 4138

Dated: 1/3/17

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 2017, the foregoing **STIPULATION** was served electronically and by U.S. Mail, postage prepaid, upon:



A handwritten signature in cursive script, appearing to read "Debra A. Filteau Begley".

DEBRA A. FILTEAU BEGLEY

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