

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-0577V

Filed: February 7, 2019

UNPUBLISHED

LEORA LACLAIR-MONTAGUE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU); Joint
Stipulation on Damages; Tetanus
Diphtheria acellular Pertussis (Tdap)
Vaccine; Shoulder Injury Related to
Vaccine Administration (SIRVA)

Shealene Priscilla Mancuso, Muller Brazil, LLP, Dresher, PA, for petitioner.

*Gabrielle Manganiello Fielding, U.S. Department of Justice, Washington, DC, for
respondent.*

DECISION ON JOINT STIPULATION¹

Dorsey, Chief Special Master:

On April 28, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered left shoulder injuries caused-in-fact by the tetanus, diphtheria, acellular pertussis (“Tdap”) vaccination she received on December 14, 2015.³ Petition at 1, ¶¶ 2, 15; Stipulation, filed Feb. 7, 2019, at ¶¶ 1-2, 4. Petitioner further alleges that she received the vaccination in the United States, that she suffered

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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).

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

³ As noted by the parties in the stipulation, although the petition indicates the Tdap vaccination was administered on December 7, 2015, the medical records show it was administered on December 14, 2015. See, e.g., Exhibit 1 (record of vaccination included in the record from petitioner's urgent care visit on December 14, 2015); Exhibit 2 at 14-17 (complete record from that visit).

the effects of her injury for more than six months, and that neither she nor any other party has filed a civil action or received compensation for her injuries, alleged as vaccine caused. Petition at ¶¶ 2, 15-17; Stipulation at ¶¶ 3-5. “Respondent denies that the flu vaccine caused petitioner to suffer from a left shoulder injury, or any other injury or condition.” Stipulation at ¶ 6.

Nevertheless, on February 7, 2019, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **the undersigned awards \$90,821.53** as follows:

1. A lump sum payment of \$90,525.00 in the form of a check payable to petitioner; and

2. A lump sum payment of \$296.53, for reimbursement of a Medicaid lien, in the form of a check payable jointly to petitioner and

**HMS, Inc. Casualty Recovery Unit
P.O. Box 167887
Irving, TX 75016-7887
Attn: Steven Noblett**

Petitioner agrees to endorse this check to HMS, Inc.

The undersigned approves the requested amount for petitioner’s compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

⁴ 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.

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

LEORA LACLAIR-MONTAGUE.

Petitioner.

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 17-577V

Chief Special Master Dorsey

ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Leora LaClair-Montague, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 *et seq.* (the "Vaccine Program"). The petition seeks compensation for injuries related to petitioner's receipt of the Tetanus, Diphtheria, 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 the Tdap vaccination on December 14, 2015.¹
3. The vaccine was administered within the United States.
4. Petitioner alleges that the vaccine caused her to suffer a left shoulder injury.
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.
6. Respondent denies that the flu vaccine caused petitioner to suffer a left shoulder injury, or any other injury or condition.

¹ Medical records clearly indicate the vaccine at issue was administered on December 14, 2015. The Petition incorrectly states the vaccine date as December 7, 2015.

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 \$296.53 in the form of a check made jointly payable to petitioner and

HMS, Inc. Casualty Recovery Unit
P.O. Box 167887
Irving, TX 75016-7887
Attn: Steven Noblett

for reimbursement of a Medicaid lien. Petitioner agrees to endorse this check to HMS, Inc.; and

- b. A lump sum of \$90,525.00 in the form of a check payable to petitioner. 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. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be

expected to be made under any 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 by entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts 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.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and 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).

13. In return for the payments described in paragraphs 8 and 9, 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, the Tdap vaccination administered on or around December 14, 2015, as alleged by petitioner in a petition for vaccine compensation filed on or about April 28, 2017, in the United States Court of Federal Claims as petition No. 17-577V.

14. 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.

15. 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.

16. 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.

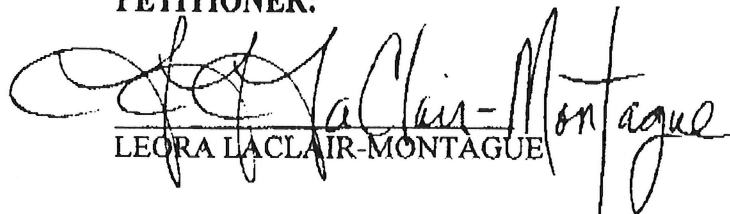
17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the vaccine caused petitioner's left shoulder injury, or any other injury or condition.

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


END OF STIPULATION

/


PETITIONER:


LEORA LACLAIR-MONTAGUE

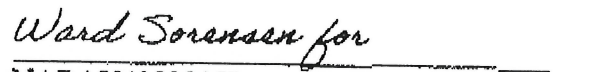
**ATTORNEY OF RECORD FOR
PETITIONER:**


SHEALENE P. WASSERMAN
MULLER BRAZIL, LLP
715 Twining Road, Suite 208
Dresher, PA 19025
(215) 885-1655
(215) 885-1644

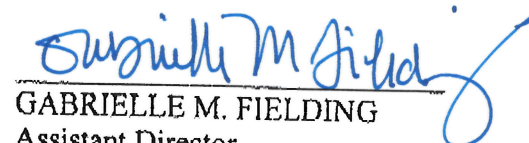
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


CATHARINE E. REEVES
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 (DICP)
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:**


GABRIELLE M. FIELDING
Assistant Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 616-4359
Gabrielle.Fielding@usdoj.gov

Dated: 7 February 2019