

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1133V

Filed: May 2, 2018

UNPUBLISHED

JUDY BARTON and JONES BARTON,
as parents and natural guardians of
E.B., a minor,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Rotavirus Vaccine; Intussusception

*Clifford John Shoemaker, Shoemaker, Gentry & Knickelbein, Vienna, VA, for petitioner.
Justine Elizabeth Walters, U.S. Department of Justice, Washington, DC, for respondent.*

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On August 22, 2017, petitioners filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioners allege that E.B. suffered “injuries, including intussusception, resulting from the adverse effects of a rotavirus vaccination received on June 2, 2017.” Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 12, 2018, a ruling on entitlement was issued, finding petitioners entitled to compensation for E.B.’s intussusception. (ECF No. 15). On May 1, 2018, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioners should be awarded \$53,299.31, representing \$50,000.00 for past and projected pain

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims’ website,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 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.

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).

and suffering (with projected amounts reduced to net present value) and \$3,299.31 for past unreimbursable expenses. (ECF No. 26). In the Proffer, respondent represented that petitioners agree with the proffered award. *Id.* at 2. Based on the record as a whole, the undersigned finds that petitioners are entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioners a total of \$53,299.31 as follows:**

- 1. A lump sum payment of \$50,000.00 for past and projected pain and suffering in the form of a check payable to petitioners, Judy Barton and Jones Barton, as guardians/conservators for E.B., for the benefit of E.B.; and**
- 2. A lump sum payment of \$3,299.31 for past unreimbursable expenses in the form of a check payable to petitioners, Judy Barton and Jones Barton.**

This total amount of \$53,299.31 represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ 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.

JUDY BARTON and JONES BARTON,
as Parents and Natural Guardians of
E.B., a Minor,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

On August 22, 2017, petitioners, Judy Barton and Jones Barton, on behalf of their minor child, E.B., filed a petition for compensation under the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-10 to -34 (“Vaccine Act”), alleging that E.B. suffered from intussusception as a result of receiving a rotavirus vaccination on June 2, 2017. On January 12, 2018, respondent filed a Rule 4(c) Report indicating that petitioners are entitled to compensation for E.B.’s intussusception. For the purposes of this proffer, the term “vaccine-related” is as described in Respondent’s Rule 4(c) Report. The same day, Chief Special Master Dorsey issued a Ruling on Entitlement finding that petitioners are entitled to compensation for E.B.’s vaccine-related injury.

Respondent proffers that E.B. should be awarded \$50,000.00 for actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been

reduced to net present value.¹ *See* 42 U.S.C. § 300aa-15(a)(4). Petitioners agree.

B. Past Unreimbursable Expenses

Evidence supplied by petitioners documents their expenditure of past unreimbursable expenses related to E.B.'s vaccine-related injury. Respondent proffers that petitioners should be awarded past unreimbursable expenses in the amount of \$3,299.31. Petitioners agree.

II. Form of the Award

The parties recommend that compensation provided to E.B. should be made through lump sum payments as described below and request that the Chief Special Master's decision and the Court's judgment award the following:

A. A lump sum payment of \$50,000.00, representing compensation for pain and suffering, in the form of a check payable to petitioners as guardians/conservators of E.B., for the benefit of E.B. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as guardians/conservators of E.B.'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of E.B., any such payment shall be made to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of E.B. upon submission of written documentation of such appointment to the Secretary.

B. A lump sum payment of \$3,299.31, representing compensation for past unreimbursable expenses made payable to Judy Barton and Jones Barton, petitioners.

¹ Should E.B. die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

III. Summary of Recommended Payments Following Judgment

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|----|--|--------------------|
| A. | Lump sum paid to petitioners as guardians/conservators of E.B.'s estate: | \$50,000.00 |
| B. | Lump sum paid to petitioners: | \$3,299.31 |

Respectfully submitted,

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s/ Justine Walters
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Dated: May 1, 2018