

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: June 10, 2022

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ASHLEY BORDERS and
MATTHEW BYLER, on behalf of
A.B., a minor child,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

UNPUBLISHED

No. 19-535V

Special Master Gowen

Stipulation for Award; Influenza
(“Flu”); Hepatitis B (“Hep B”);
Transverse Myelitis.

Anne Carrion Toale, Maglio Christopher and Toale, Sarasota, FL, for petitioner.
Colleen Clemons Hartley, Department of Justice, Washington, D.C., for respondent.

DECISION FOR STIPULATION1

On April 11, 2019, Ashley Borders and Matthew Byler (“petitioners”), on behalf of A.B., a minor child filed a petition for compensation under the National Vaccine Injury Program.2 Petitioner alleged that as a result of receiving the Influenza (“flu”) and hepatitis B (“Hep B”) vaccinations on September 17, 2017, he suffered from transverse myelitis (“TM”) and he suffered the residual effects of this injury for more than six months.

On June 6, 2022, respondent filed a stipulation providing that a decision should be entered awarding compensation to petitioner. Stipulation (“Stip.”) (ECF No. 51). Respondent denies that the Flu and Hep B vaccines caused petitioner’s alleged injuries, or any other injury or

1 Pursuant to the E-Government Act of 2002, see 44 U.S.C. § 3501 note (2012), because this opinion contains a reasoned explanation for the action in this case, I am required to post it on the website of the United States Court of Federal Claims. The court’s website is at http://www.uscfc.uscourts.gov/aggregator/sources/7. This means the opinion will be available to anyone with access to the Internet. Before the opinion is posted on the court’s website, each party has 14 days to file a motion requesting 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). “An objecting party must provide the court with a proposed redacted version of the decision.” Id. If neither party files a motion for redaction within 14 days, the opinion will be posted on the court’s website without any changes. Id.

2 The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

his current condition. *Id.* at ¶ 6. Nevertheless, maintaining their respective positions, the parties now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation to the petitioner according to the terms of the stipulation attached hereto as Appendix A. *Id.* at ¶ 7.

The stipulation provides:

- a. **A lump sum of \$138,400.00, which amount represents compensation for first year life care expenses and pain and suffering, in the form of a check payable to petitioners as guardian(s)/conservator(s) of the estate of A.B. for the benefit of A.B. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as guardian(s)/conservator(s) of A.B.'s estate;**
- b. **A lump sum of \$6,739.76, which amount represents compensation for past unreimbrusable expenses, in the form of a check payable to petitioners, Ashley Borders and Matthew Byler.**
- c. **A lump sum of \$1,619.01, which amount represents the reimbursement of a lien for services rendered on behalf of A.B., in the form of a check payable jointly to petitioners and**

**Treasurer, State of Ohio
Ohio Department of Health
Revenue Room
246 North High Street
Columbus, Ohio 43215-0278
Member #: 001402447906
Attn: Patrick Londergan**

Petitioners agree to endorse this check to the Treasurer, State of Ohio.

- d. **An amount sufficient to purchase the annuity contract described in paragraph 10 of the stipulation, paid to the life insurance company from which the annuity will be purchased.**

I adopt the parties' stipulation attached hereto, and award compensation in the amount and on the terms set forth therein. The Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

s/Thomas L. Gowen
Thomas L. Gowen
Special Master

³ Entry of judgment is expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).