

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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 [REDACTED]  
 Petitioner,  
 v.  
 SECRETARY OF HEALTH  
 AND HUMAN SERVICES,  
 Respondent.  
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No. 14-907V  
 Special Master Christian J. Moran  
 Filed: July 19, 2021  
 Stipulation; measles-mumps-rubella  
 (“MMR”) vaccine; encephalitis.

Andrew D. Downing, Van Cott & Talamante, PLLC, Phoenix, AZ, for Petitioner;  
Ida Nassar, United States Dep’t of Justice, Washington, DC, for Respondent.

### UNPUBLISHED DECISION<sup>1</sup>

On July 13, 2021, the parties filed a joint stipulation concerning the petition for compensation filed by [REDACTED] on September 26, 2014. In the petition, petitioner alleged that the measles-mumps-rubella (“MMR”) vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a), and which [REDACTED] received on June 12, 2012, caused [REDACTED] to suffer from encephalitis. Petitioner also notes that [REDACTED] received a diphtheria-tetanus-acellular pertussis vaccine the same day. Petitioner further allege that [REDACTED] suffered the residual effects of this injury for more than six months. Petitioner represent that there has been no prior award or settlement of a civil action for damages on [REDACTED]’s behalf as a result of [REDACTED]’s condition.

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<sup>1</sup> The E-Government Act, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Respondent denies that the vaccines either caused [REDACTED] to suffer from encephalitis or any other injury or her current condition.

Nevertheless, the parties agree to the joint stipulation, attached hereto. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- a. A lump sum payment of \$622,315.00, which amount represents compensation for first-year life care expenses (\$22,315.85) and combined lost future earnings and pain and suffering (\$600,000.00), in the form of a check payable to petitioner as guardian//conservator of the estate of [REDACTED] for the benefit of [REDACTED]. No payments shall be made until petitioner provides respondent with documentation establishing that she has been appointed as guardian/conservator of [REDACTED]'s estate;**
- b. A lump sum payment of \$33,092.64, which amount represents compensation for past unreimbursable expenses, in the form of a check payable to petitioner, [REDACTED] [REDACTED]; and**
- c. 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.**

**These amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment according to this decision and the attached stipulation.<sup>2</sup>

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

**IT IS SO ORDERED.**

s/Christian J. Moran  
Christian J. Moran  
Special Master

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

_____ )	
[REDACTED] )	
) )	
) )	
Petitioner, )	No. 14-907V
v. )	Special Master Moran
SECRETARY OF HEALTH AND HUMAN )	ECF
SERVICES, )	)
Respondent. )	)
_____ )	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her daughter, [REDACTED], 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 [REDACTED]'s receipt of the measles-mumps-rubella ("MMR") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).

2. [REDACTED] received her immunization on June 12, 2012. She also received a diphtheria-tetanus-acellular vaccine the same day.

3. The vaccines were administered within the United States.

4. Petitioner alleges that [REDACTED] suffered from encephalitis as a result of receiving the MMR vaccine.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of [REDACTED] as a result of her condition.

6. Respondent denies that the vaccines caused [REDACTED] to suffer from encephalitis or any other injury or her current condition.

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 \$622,315.85, which amount represents compensation for first-year life care expenses (\$22,315.85) and combined lost future earnings and pain and suffering (\$600,000.00), in the form of a check payable to petitioner as guardian/conservator of the estate of [REDACTED] for the benefit of [REDACTED]. No payments shall be made until petitioner provides respondent with documentation establishing that she has been appointed as guardian/conservator of [REDACTED]'s estate;
- b. A lump sum of \$33,092.64, which amount represents compensation for past unreimbursable expenses, in the form of a check payable to petitioner, [REDACTED]; and
- c. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

These amounts represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

9. The Life Insurance Company must have a minimum of \$250,000,000.00 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;

- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of [REDACTED], pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner, as the court-appointed guardian/conservator of the estate of [REDACTED] for the following items of compensation:

a. For future unreimbursable Blue Cross Blue Shield Maximum out of Pocket expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$5,000.00 to be paid up to the anniversary of the date of judgment in year 2036, increasing at the rate of three percent (3%), compounded annually from the date of judgment.

b. For future unreimbursable Blue Cross Blue Shield Premium, Anthem Silver Premium, Medicare Part B Premium, and Medicare Advantage expenses, beginning on the anniversary of the date of judgment in year 2032, an annual amount of \$2,374.20 to be paid up to the anniversary of the date of judgment in year 2036. Then, beginning on the anniversary of the date of judgment in year 2036, an annual amount of \$3,208.20 to be paid up to the anniversary of the date of judgment in year 2049. Thereafter, beginning on the anniversary of the date of judgment in year 2049, an annual amount of \$5,982.00 to be paid for the remainder of [REDACTED]'s life, all amounts increasing at the rate of three percent (3%), compounded annually from the date of judgment.

c. For future unreimbursable Anthem Silver Maximum out of Pocket expenses, beginning on the anniversary of the date of judgment in year 2036, an annual amount of \$8,550.00 to be paid up to the anniversary of the date of judgment in year 2049, increasing at the rate of three percent (3%), compounded annually from the date of judgment.

d. For future unreimbursable Travel to Specialists expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$541.20 to be paid up to the anniversary of the date of judgment in year 2032, increasing at the rate of three percent (3%), compounded annually from the date of judgment.

e. For future unreimbursable Dance Therapy and Gym Membership expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$800.00 to be paid up to the anniversary of the date of judgment in year 2083, increasing at the rate of three percent (3%), compounded annually from the date of judgment.

f. For future unreimbursable Probiotic, Silver Miracle, Soap, and Bed Protector expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$397.78 to be paid for the remainder of ■■■■■'s life, increasing at the rate of three percent (3%), compounded annually from the date of judgment.

g. For future unreimbursable Special Shoe, Hand Held Shower, ADL, Adaptive Kitchen Item, and Steps for Raised Outdoor Pool expenses, on the first anniversary of the date of judgment, a lump sum of \$272.04. Then, beginning on the second anniversary of the date of judgment, an annual amount of \$138.70 to be paid up to the anniversary of the date of judgment in year 2050. Then, beginning on the anniversary of the date of judgment in year 2050, an annual amount of \$133.33 to be paid up to the anniversary of the date of judgment in year 2052. Then, on the anniversary of the date of judgment in year 2052, a lump sum of \$116.66. Thereafter, beginning on the anniversary of the date of judgment in year 2053, an annual amount of \$83.33 to be paid for the remainder of ■■■■■'s life, all amounts increasing at the rate of three percent (3%), compounded annually from the date of judgment.

h. For future unreimbursable Medical Stroller expenses, on the anniversary of the date of judgment in year 2026, a lump sum of \$2,371.70, increasing at the rate of three percent (3%), compounded annually from the date of judgment.

i. For future unreimbursable Scooter, Scooter Battery, Scooter Maintenance, Scooter Lift, and Medical Alert expenses, on the anniversary of the date of judgment in year 2029, a lump sum of \$4,003.69. Then, on the anniversary of the date of judgment in year 2030, a lump sum of \$751.39. Thereafter, beginning on the anniversary of the date of judgment in year 2031, an annual amount of \$1,122.79 to be paid for the remainder of ■■■■■'s life, all amounts increasing at the rate of three percent (3%), compounded annually from the date of judgment.

j. For future unreimbursable Home Care/Supportive Living, Pull Up, and Poise Pad expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$8,147.60 to be paid up to the anniversary of the date of judgment in year 2032. Then, beginning on the anniversary of the date of judgment in year 2032, an annual amount of \$15,635.60 to be paid up to the anniversary of the date of judgment in year 2053. Thereafter, beginning on the anniversary of the date of judgment in year 2053, an annual amount of \$30,659.60 to be paid for the remainder of ■■■■■'s life, all amounts increasing at the rate of three percent (3%), compounded annually from the date of judgment.

k. For future unreimbursable Tutoring expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$720.00 to be paid up to the anniversary of the date of judgment in year 2032, increasing at the rate of three percent (3%), compounded annually from the date of judgment.

l. For future unreimbursable Case Management expenses, beginning on the anniversary of the date of judgment in year 2031, an annual amount of \$2,400.00 to be paid for the



remainder of ■■■'s life, increasing at the rate of three percent (3%), compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to the petitioner in monthly, quarterly, annual, or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to the petitioner and do not require that the payment be made in one annual installment. The petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as ■■■ is alive at the time that a particular payment is due. Written notice to the Secretary of Health and Human Services, and the Life Insurance Company shall be provided within twenty (20) days of ■■■'s death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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.



13. 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.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. 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 [REDACTED], 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).

16. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of [REDACTED]'s estate under the laws of the State of Ohio. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of [REDACTED]'s estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of [REDACTED] 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 guardian/conservator of the estate of [REDACTED] upon submission of written documentation of such appointment to the Secretary.

17. In return for the payments described in paragraphs 8 and 12, petitioner, in her individual capacity and as legal representative of [REDACTED], on behalf of herself, [REDACTED], and [REDACTED]'s 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. § 300 aa-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 [REDACTED] resulting from, or alleged to have resulted from the vaccinations administered on June 12, 2012, as alleged by petitioner in a petition for vaccine compensation filed on or about September 26, 2014, in the United States Court of Federal Claims as petition No. 14-907V.

18. If [REDACTED] 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.

19. 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.

20. 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 12 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.

21. Petitioner hereby authorizes respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

22. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the vaccines caused [REDACTED] to suffer from encephalitis or any other injury or condition.

23. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of [REDACTED].

END OF STIPULATION

Respectfully submitted,



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