

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 01-579V

Filed: June 21, 2005

FILED
JUN 21 2005
U.S. COURT OF FEDERAL CLAIMS

BEULAH NIX,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent.

DECISION¹

On June 16, 2005, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. The court hereby grants the parties' said Stipulation. The Clerk shall enter judgment accordingly.²

IT IS SO ORDERED.

[Handwritten signature of Gary J. Golkiewicz]
Gary J. Golkiewicz
Chief Special Master

¹The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

²Pursuant 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 Court of Federal Claims judge.

GMF/LAW

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U.S. COURT OF FEDERAL CLAIMS

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OFFICE OF SPECIAL MASTERS

BEULAH NIX,
Petitioner,
v.
SECRETARY OF HEALTH AND
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Respondent.

No. 01-579V
Chief Special Master
Gary J. Golkiewicz

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STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. On October 9, 2001, Beulah Nix ("petitioner"), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, *as amended* (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of measles-mumps-rubella ("MMR") vaccine. MMR is a vaccine contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a)(IV).
2. Petitioner received her MMR vaccination on October 9, 1998.
3. The vaccine was administered within the United States.
4. Petitioner claims that she suffered from chronic arthritis within 7 to 42 days following the MMR vaccine, and that her injury is presumptively associated with receipt of the vaccine under 42 C.F.R. § 100.3(b)(6). She further contends that her present condition, to include rheumatoid arthritis, is a sequela of her alleged vaccine-related 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 alleged vaccine-related condition.

6. Respondent's Rule 4 Report, filed on August 5, 2002, denies that petitioner can establish a Table injury of chronic arthritis due to her pre-existing osteoarthritis of the hands. Further, respondent claims that medical records submitted do not show objective signs of continued joint swelling required to establish that petitioner's current condition (variously diagnosed as fibromyalgia or rheumatoid arthritis) is the sequela of her alleged vaccine-related injury.

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 payment:

a. A lump sum of \$100,000 in the form of a check payable to petitioner. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

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 special master shall preside over further proceedings to award reasonable attorney's fees and costs incurred in proceeding upon this petition.

10. 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.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorney's fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for petitioner's alleged vaccine-related injury 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 paragraphs 8 and 9, petitioner, in her individual capacity, and her heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the MMR vaccination administered on October 9, 1998, as alleged by petitioner in a petition for vaccine compensation filed on or about October 9, 2001, in the United States Court of Federal Claims as petition No. 01-579V.

13. In the event petitioner should die prior to the Secretary making any or all of the payments described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

14. In the event the special master fails to issue a decision in complete conformity with the terms of this Stipulation, or in the event the Court of Federal Claims fails to enter judgment in a decision that is in complete conformity with the terms of this Stipulation, then the parties'

settlement and this Stipulation shall be null and void at the sole discretion of either party.

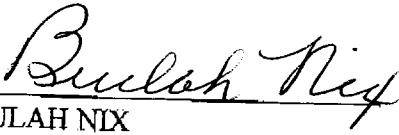
15. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

16. All rights and obligations of petitioner hereunder shall apply equally to her successors and assigns.

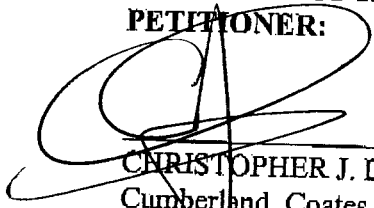
END OF STIPULATION

Respectfully submitted,

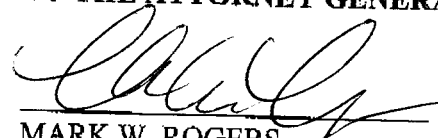
PETITIONER:


BEULAH NIX

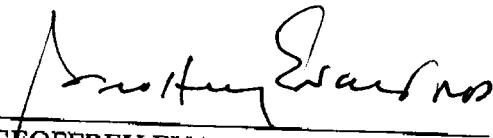
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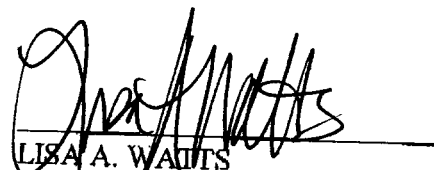
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Dated: 6-16-2005