

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-313V

Filed: April 19, 2016

UNPUBLISHED

██████████

Petitioner,

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Damages Decision Based on Proffer;
Influenza Vaccine (“Flu Vaccine”);
Shoulder Injury Related to Vaccine
Administration (“SIRVA”);
Special Processing Unit (“SPU”)

*Diana Sedar, Maglio, Christopher and Toale, PA (FL), Sarasota, FL, for petitioner.
Sarah Duncan, U.S. Department of Justice, Washington, DC for respondent.*

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On March 26, 2015, ██████████ filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act” or “Program”). Petitioner alleged that she suffered injuries causally related to the influenza vaccine she received in her left deltoid on October 29, 2013. Petition, ¶¶ 1, 13. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 5, 2015, a ruling on entitlement was issued, finding petitioner entitled to compensation. On April 19, 2016, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$15,479.90 for past and future lost earnings, \$125,000.00 for projected and actual pain and suffering, and \$1,144.50 for past unreimbursable expenses for a total award of \$141,624.40. Proffer at 1-2. In the

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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 (2006).

Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$141,624.40 in the form of a check payable to petitioner, [REDACTED]. This total award represents \$15,479.90 in lost earnings, \$125,000.00 in pain and suffering, and \$1,144.50 in unreimbursable expenses.** This amount represents compensation for all damages that would be available under § 300aa-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.

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

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██████████)	
)	
	Petitioner,)	
)	No. 15-0313V
v.)	Chief Special Master Dorsey
)	ECF
	SECRETARY OF HEALTH AND HUMAN)	
	SERVICES,)	
)	
	Respondent.)	
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RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Lost Earnings

The parties agree that based upon the evidence of record, ██████████ has suffered past and future loss of earnings as a result of her vaccine-related injury. Therefore, respondent proffers that the Court should award ██████████ a lump sum of \$15,479.90 for her past and future lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

B. Pain and Suffering

Respondent proffers that ██████████ should be awarded \$125,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

C. Past Unreimbursable Expenses

Evidence supplied by petitioner documents [REDACTED] expenditure of past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$1,144.50, as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

II. Form of the Award

The parties recommend that the compensation provided to [REDACTED] should be made through a lump sum payment as described below and request that the Special Master's decision and the Court's judgment award the following¹: a lump sum payment of \$141,624.40, representing compensation for lost earnings (\$15,479.90), pain and suffering (\$125,000), and past unreimbursable expenses (\$1,144.50), in the form of a check payable to petitioner, [REDACTED].

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, [REDACTED] **\$ 141,624.40**

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

¹ Should petitioner 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 lost earnings and future pain and suffering.

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s/ Sarah C. Duncan
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