

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1176V

Filed: March 29, 2019

UNPUBLISHED

[REDACTED]

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Tetanus Diphtheria acellular  
Pertussis (Tdap) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Joseph Alexander Vuckovich, Maglio Christopher & Toale, PA, Washington, DC, for petitioner.*

*Daniel Anthony Principato, U.S. Department of Justice, Washington, DC, for respondent.*

## **DECISION AWARDING DAMAGES**<sup>1</sup>

**Dorsey**, Chief Special Master:

On June 22, 2018, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of a Tetanus diphtheria acellular pertussis (“Tdap”) vaccination she received on June 22, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

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<sup>1</sup> The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** 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. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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).

<sup>2</sup> 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).

On June 26, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for a SIRVA. On March 29, 2019, respondent filed a proffer on award of compensation ("Proffer") indicating petitioner should be awarded \$72,621.73 (representing \$121.73 for unreimbursed past expenses and \$72,500.00 for past and future pain and suffering) and \$708.13 to satisfy a State of Nevada Medicaid lien. Proffer at 2. In the 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**

- (1) Petitioner a lump sum payment of \$72,621.73 (representing \$121.73 for unreimbursed past expenses and \$72,500.00 for past and future pain and suffering) in the form of a check payable to petitioner, [REDACTED] and**
- (2) A lump sum payment of \$708.13, representing compensation for satisfaction of the State of Nevada Medicaid lien<sup>3</sup> and to:**

State of Nevada Division of Health Care Financing and Policy  
HMS NV Casualty Unit  
PO Box 844648  
Los Angeles, CA 90084

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>4</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> Petitioner agrees to endorse this payment to the State of Nevada.

<sup>4</sup> 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**

[REDACTED]	)	
	)	
Petitioner,	)	No. 17-1176V
	)	Chief Special Master Dorsey
v.	)	ECF
	)	
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

**PROFFER ON AWARD OF COMPENSATION**

**I. Compensation for Vaccine Injury-Related Items**

On June 22, 2018, respondent filed a Vaccine Rule 4(c) report concluding that petitioner suffered an injury that is compensable under the National Childhood Vaccine Injury Act of 1986, as amended, 42 U.S.C. §§ 300aa-10 to -34. Accordingly, on June 26, 2018, the Chief Special Master issued a Ruling on Entitlement.

Respondent now proffers that, based on the evidence of record, petitioner should be awarded \$73,329.86. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Items of Compensation and Form of the Award**

The parties recommend that the compensation provided to petitioner should be made through lump sum payments described below, and request that the Chief Special Master’s decision and the Court’s judgment award the following: <sup>1</sup>

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<sup>1</sup> 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 medical expenses, future pain and suffering, and future lost wages.

A. Petitioner's Damages

A lump sum payment of \$72,621.73 (representing \$121.73 for unreimbursed past expenses and \$72,500 for past and future pain and suffering) in the form of a check payable to petitioner, [REDACTED]

B. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the State of Nevada Medicaid lien in the amount of \$708.13, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Nevada had made to or on behalf of [REDACTED] from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about June 22, 2016, under Title XIX of the Social Security Act. Reimbursement of the State of Nevada lien shall be made through a lump sum payment of \$708.13, representing compensation for satisfaction of the State of Nevada lien, payable jointly to petitioner, and

State of Nevada Division of Health Care Financing and Policy  
HMS NV Casualty Unit  
PO Box 844648  
Los Angeles, CA 90084

Petitioner agrees to endorse this payment to the State of Nevada.

C. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

**III. Summary of Recommended Payments Following Judgment**

A. Lump sum paid to petitioner	\$72,621.73
B. Reimbursement of Medicaid lien	\$708.13

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

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Acting Director  
Torts Branch, Civil Division

CATHARINE E. REEVES  
Deputy Director  
Torts Branch, Civil Division

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Torts Branch, Civil Division

/s/ Daniel A. Principato  
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Dated: March 29, 2019