

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-0085V

Filed: March 28, 2019

UNPUBLISHED

[REDACTED]

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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

Isaiah Richard Kalinowski, Maglio Christopher & Toale, PA, Washington, DC, for petitioner.

Adriana Ruth Teitel, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On January 17, 2018, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that he suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza vaccine that was administered on October 31, 2016. Petition at 1-4. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 29, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for his SIRVA. On March 27, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded

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 Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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

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 (2012).

\$130,377.76 (representing \$130,000.00 for pain and suffering and \$377.76 for unreimbursable out of pocket expenses). Proffer at 1. 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 petitioner a lump sum payment of \$130,377.76 (representing \$130,000.00 for pain and suffering and \$377.76 for unreimbursable out of pocket expenses) in the form of a check payable to petitioner, [REDACTED]** This amount represents compensation for all damages that would be available under § 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**

<div style="background-color:black; width:150px; height:20px; margin:0 auto 20px auto;"></div> Petitioner, v. SECRETARY OF HEALTH AND HUMAN SERVICES, Respondent.	No. 18-85V Chief Special Master Dorsey ECF
---	--

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items

On November 29, 2018, respondent filed a Rule 4(c) Report conceding that petitioner is entitled to vaccine compensation for his Shoulder Injury Related to Vaccine Administration (“SIRVA”) injury. The Chief Special Master’s Ruling on Entitlement, adopting respondent’s recommendation, was issued the same day, on November 29, 2018.

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$130,377.76. This is comprised of pain and suffering (\$130,000.00) and unreimbursable out of pocket expenses (\$377.76), and represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

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 medical expenses and future pain and suffering.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$130,377.76 in the form of a check payable to petitioner.²

Petitioner agrees.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Assistant Director
Torts Branch, Civil Division

/s/ Adriana Teitel
ADRIANA TEITEL
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146, Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 616-3677

Dated: March 27, 2019

² Petitioner is a competent adult, therefore evidence of guardianship is not required in this case.