

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-0838V

Filed: July 26, 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UNPUBLISHED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; Brachial
Neuritis

*Danielle Strait, Maglio Christopher & Toale, PA, Seattle, WA, for petitioner.
Ida Nassar, U.S. Department of Justice, Washington, DC, for respondent.*

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On June 13, 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 she suffered brachial neuritis causally related to an adverse reaction from the tetanus, diphtheria, acellular pertussis (“tdap”) vaccination she received in her left arm on February 19, 2016. Petition at 1, ¶¶ 1, 9-10. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 29, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for her brachial neuritis. On July 26, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$77,189.02, representing an award of \$75,000.00 for petitioner’s actual and project pain and

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 Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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

suffering³ and an award of \$2,189.02 for petitioner's actual unreimbursable expenses. Proffer at 1-2. 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 petitioner a lump sum payment of \$77,189.02, representing an award of \$75,000.00 for petitioner's actual and project pain and suffering and an award of \$2,189.02 for petitioner's actual unreimbursable 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.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ The Proffer indicates the amount awarded for petitioner's projected pain and suffering has been reduced to its net present value. Proffer at 1; see § 15(f)(4)(A) (requiring a reduction to net present value for future compensation being currently paid).

⁴ 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,)	
)	
v.)	No. 18-838V
)	Chief Special Master Dorsey
)	ECF
SECRETARY OF HEALTH AND HUMAN)	
SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On June 13, 2018, [REDACTED] (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered brachial neuritis as a result of a tetanus-diphtheria-acellular pertussis (“Tdap”) vaccine administered to her on February 19, 2016. Petition at 1-2. On April 29, 2019, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act, and the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation the same day. ECF No. 26; ECF No. 27.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that [REDACTED] should be awarded \$75,000.00 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.

B. 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 \$2,189.02, as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to [REDACTED] should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹: a lump sum payment of \$77,189.02, representing compensation for pain and suffering (\$75,000.00), and past unreimbursable expenses (\$2,189.02), in the form of a check payable to petitioner, [REDACTED]

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, [REDACTED]	\$77,189.02
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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

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.

HEATHER L. PEARLMAN
Assistant Director
Torts Branch, Civil Division

/s/ Ida Nassar
IDA NASSAR
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 616-4186

DATED: July 26, 2019