

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-0429V

Filed: November 30, 2017

UNPUBLISHED

██████████,

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)

*Leah V. Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.
Darryl R. Wishard, U.S. Department of Justice, Washington, DC, for respondent.*

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On March 27, 2017, ██████████ (“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 that as a result of receiving the tetanus diphtheria-acellular pertussis (“Tdap”) vaccine on May 9, 2016, she suffered a left shoulder injury related to vaccine administration (“SIRVA”). Petition at 1-2. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On September 18, 2017, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On November 30, 2017, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$120,000.00. Proffer at 2. In the Proffer, respondent represented that petitioner agrees

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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 (2012).

with the proffered award. 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 \$120,000.00, in the form of a check payable to petitioner, [REDACTED]**. 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**

<p>██████████,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>SECRETARY OF HEALTH AND HUMAN SERVICES,</p> <p style="text-align: center;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. 17-429V ECF</p> <p>Chief Special Master Dorsey</p>
---	---	---

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On March 27, 2017, ██████████ (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. She alleges that, as a result of receiving the tetanus-diphtheria-acellular pertussis (“Tdap”) vaccine on May 9, 2016, she suffered a left shoulder injury related to vaccine administration (“SIRVA”). Petition at 1-2.

On September 18 2017, respondent filed her Vaccine Rule 4(c) report, conceding causation-in-fact for a SIRVA to petitioner’s left arm. On September 18, 2017, the Chief Special Master issued a ruling on entitlement, finding that petitioner was entitled to compensation for a SIRVA to petitioner’s left arm.

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

\$120,000.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

III. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$120,000.00, in the form of a check payable to petitioner.²

Petitioner agrees.

Respectfully submitted,

CHAD A. READLER
Principal Deputy 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/Darryl R. Wishard
DARRYL R. WISHARD
Senior Trial Attorney
Torts Branch, Civil Division
U. S. Department of Justice
P.O. Box 146, Benjamin Franklin Station
Washington, D.C. 20044-0146
Direct dial: (202) 616-4357
Fax: (202) 616-4310

Dated: November 30, 2017

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.