

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

* * * * *

EMILY TARSELL, as the Executrix *
of the Estate of CHRISTINA *
TARSELL, *

Petitioner, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

* * * * *

No. 10-251V
Special Master Christian J. Moran

Filed: February 26, 2018

Damages; decision on proffer;
human papillomavirus
("HPV") vaccine; sudden
death.

Mark T. Sadaka, Mark T. Sadaka, LLC, Englewood, NJ, for petitioner;
Ann D. Martin, United States Dep't of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION AWARDING DAMAGES¹

On April 19, 2010, Emily Tarsell, as executrix of Christina Tarsell's Estate, filed a petition seeking compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-1 through 34, alleging that the human papillomavirus ("HPV") vaccine caused Christina to die suddenly and unexpectedly. Initially, the undersigned found that Ms. Tarsell had not met her burden of proof. Decision, 2016 WL 880223 (Fed. Cl. Spec. Mstr. Feb. 16, 2016). However, the Court of Federal Claims vacated the decision and remanded for additional consideration under different legal standards. Opinion and Order, 133 Fed. Cl. 782 (2017). Under the Court-directed legal standards, the undersigned found that Ms. Tarsell was entitled to compensation. Ruling, 2017 WL 4583233 (Fed. Cl. Spec. Mstr. Sep. 25, 2017).

¹ The E-Government Act, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

On February 20, 2018, respondent filed a Proffer on Award of Compensation, to which petitioner agrees. Respondent, nonetheless, maintains his position that petitioner has not established entitlement under the legal standard adopted by the Federal Circuit and denies that Christina Tarsell's arrhythmia and death were caused by vaccination.

Based upon the record as a whole, the special master finds the Proffer reasonable and that petitioner is entitled to an award as stated in the Proffer. Pursuant to the attached Proffer—in the form of a check payable to petitioner as the legal representative of Christina Tarsell's estate—the court awards petitioner:

1. **A lump sum payment of \$250,000.00 for Christina Tarsell's vaccine-related death;**
2. **A lump sum payment of \$60,000.00 for past pain and suffering for Christina Tarsell's vaccine-related injury; and,**
3. **A lump sum payment of \$130.00 for past unreimbursable expenses related to Christina Tarsell's vaccine-related injury.**

These amounts reflect all elements of compensation to which petitioner would be entitled under 42 U.S.C. §300aa-15(a). In the Proffer, the parties note that they have waived their right to seek review of this damages decision. However, the Secretary has reserved his right to seek review of the September 25, 2017 ruling finding entitlement. The Clerk's Office is instructed:

- (1) To enter judgment in case 10-251V according to this decision and the attached Proffer;
- (2) To provide this decision to the presiding judge pursuant to Vaccine Rule 28.1(a).

Any questions may be directed to my law clerk, Matthew Ginther, at (202) 357-6360.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

I. Items of Compensation

For purposes of this proffer, the term “vaccine-related” is as described in the Special Master’s September 25, 2017, decision finding petitioner entitled to an award under the Vaccine Act. Based upon the evidence of record, respondent proffers that petitioner, as legal representative of the estate of Christina Tarsell, should be awarded the following items of compensation, pursuant to 42 U.S.C. § 300aa-15(a):

- A. \$250,000.00 for Christina Tarsell’s vaccine-related death;
- B. \$60,000.00 for past pain and suffering for Christina Tarsell’s vaccine-related injury; and,
- C. \$130.00 for past unreimbursable expenses related to Christina Tarsell’s vaccine-related injury.

These amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. §300aa-15(a). Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation should be made through a lump sum payment of \$310,130.00 in the form of a check payable to petitioner as the legal representative of the estate of Christina Tarsell. Petitioner agrees.

No payment shall be made until petitioner provides respondent with documentation that she has been appointed the legal representative of Christina Tarsell’s estate.

Respectfully submitted,

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Dated: February 20, 2018