

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 12-155V

Filed: January 31, 2022

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NICOLE MATTEN, *as Parent and Legal Representative of the Estate of her Daughter*, K.M.,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

* * * * *

UNPUBLISHED

Decision on Damages; Influenza (“Flu”) Vaccine; Parainfluenza Virus Type 1; Hypersensitivity; Eosinophilic Myocarditis; Death; Proffer.

Patricia Finn, Esq., Patricia Finn, P.C., Nanuet, NY, for petitioner.
Jamica Littles, Esq., U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Roth, Special Master:

On March 6, 2012, Nicole Matten (“petitioner”), as parent and legal representative of the estate of her daughter, K.M., filed a petition for compensation under the National Vaccine Injury Compensation Program.² Petitioner alleged that K.M. suffered myocarditis following the receipt of an influenza vaccine on December 2, 2011 and passed away due to complications of her myocarditis on December 6, 2011. *See* Petition, ECF No. 1. An entitlement hearing was held on April 30 and May 1, 2018 and on October 22-23, 2018 in Washington, D.C. On November 2, 2021, I issued a ruling on entitlement finding that petitioner was entitled to compensation. *See* Ruling on Entitlement, ECF No. 184.

¹ Although this Decision has been formally designated “unpublished,” it will nevertheless be posted on the Court of Federal Claims’s website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). **This means the Decision will be available to anyone with access to the internet.** However, the parties may object to the Decision’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the whole Decision will be available to the public. *Id.*

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (1986). Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa(2012).

Respondent filed a proffer on January 28, 2022, agreeing to issue the following payment. Proffer, ECF No. 189.

A lump sum payment of \$350,000.00, representing compensation for pain and suffering (\$100,000.00), and the death benefit (\$250,000.00), **in the form of a check payable to petitioner, as the parent and legal representative of the estate of her daughter, K.M.**³ This amount represents compensation for all damages that would be available under § 300aa-15(a).

I adopt respondent's proffer attached hereto, and award compensation in the amount and on the terms set forth therein. The clerk of the court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/ Mindy Michaels Roth

Mindy Michaels Roth
Special Master

³ No payments shall be made until petitioner provides respondent with documentation establishing her appointment as the legal representative of the estate of her daughter, K.M. If petitioner is not authorized by a court of competent jurisdiction to serve as the legal representative of K.M.'s estate, then such payment shall be made to the party or parties appointed by the court of competent jurisdiction to serve as the legal representative of K.M.'s estate.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

NICOLE MATTEN, as parent and legal
Representative of the Estate of her Daughter,
KM,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 12-155V
Special Master Roth
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On March 6, 2012, Nicole Matten, as parent and legal representative of the estate of her daughter, KM, (“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”). ECF No. 1. Petitioner alleged that her daughter (“KM”) suffered myocarditis, as defined in the Vaccine Injury Table, following the receipt of an influenza vaccine on December 2, 2011. Petition at 1-3. Petitioner further alleged that KM passed away due to complications of her myocarditis on December 6, 2011. *Id.* at 2-3. On May 31, 2012, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report, recommending dismissal of petitioner’s claim because petitioner failed to provide preponderant evidence in support of her petition for compensation. ECF No. 12 at 7.

After the parties filed expert reports, the Court scheduled a two-day entitlement hearing for April 30, 2018 and May 1, 2018. ECF No. 142-43. The entitlement hearing resumed on October 22, 2018 and October 23, 2018 after additional supplemental expert reports were

submitted. ECF No. 164-65. On November 2, 2021, the Court issued a Ruling on Entitlement, finding petitioner entitled to compensation.¹ ECF No. 183, 185-86.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded a lump sum of \$350,000.00 (\$250,000.00 for the death benefit; \$100,000.00 for pain and suffering). This amount represents 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 Court award petitioner a lump sum payment of \$350,000.00, in the form of a check payable to petitioner, as the parent and legal representative of the estate of her daughter, KM.² Petitioner agrees.

III. Summary of Recommended Payment

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| Lump sum payment to petitioner, Nicole Matten, as parent and legal Representative of the Estate of her Daughter, KM: | \$350,000.00 |
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Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

¹ Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the special master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of Special Master Roth's November 2, 2021, entitlement decision.

² Before payment on a judgment can be made in this case, respondent will require petitioner to provide documentation establishing her appointment as the legal representative of the estate of her daughter, KM. If petitioner is not authorized by a court of competent jurisdiction to serve as the legal representative of KM's estate, then such payment on any judgment shall be made to the party or parties appointed by a court of competent jurisdiction to serve as the legal representative of KM's estate.

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

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
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/s/ *Jamica M. Littles*
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DATED: January 28, 2022