

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: February 13, 2024

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E.M.,

\*

No. 14-753V

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Petitioner,

\*

Special Master Sanders

\*

v.

\*

\*

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

\*

\*

\*

Respondent.

\*

\* \* \* \* \*

*Scott B. Taylor*, Urban & Taylor, S.C., Milwaukee, WI, for Petitioner.

*Voris E. Johnson*, U.S. Department of Justice, Washington, DC, for Respondent.

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On August 19, 2014, E.M. (“Petitioner”) filed a petition pursuant to the National Vaccine Injury Compensation Program.<sup>2</sup> Pet. at 1, ECF No. 1. Petitioner alleged that the influenza (“flu”) vaccine she received on August 23, 2011 caused her to suffer from small fiber neuropathy. Pet. at 1.

I held an entitlement hearing in this case on June 18-19, 2019. *See* ECF No. 81-82. On July 9, 2021, I issued a ruling on entitlement finding that Petitioner was entitled to compensation. Ruling on Entitlement, ECF No. 93.

On February 12, 2024, Respondent filed Respondent’s Proffer on Award of Damages (“Proffer”). Proffer, ECF No. 159. Based on the record as a whole, the undersigned finds that Petitioner is entitled to an award as stated in the Proffer.

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<sup>1</sup> Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **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, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 et seq. (hereinafter “Vaccine Act,” “the Act,” or “the Program”).

Pursuant to the terms stated in the Proffer, attached as Appendix A, the undersigned awards Petitioner:

**A lump sum payment of \$245,126.01, which amount includes \$225,000.00 for pain and suffering; \$10,126.01 for past unreimbursed expenses; and \$10,000.00 for future unreimbursable medical expenses, in the form of a check made payable to Petitioner, E.M. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which Petitioner is entitled.**

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of court **SHALL ENTER JUDGMENT** herewith.<sup>3</sup>

**IT IS SO ORDERED.**

s/Herbrina D. Sanders  
Herbrina D. Sanders  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of a notice renouncing the right to seek review.

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

_____	)	
E.M.,	)	
	)	
Petitioner,	)	
	)	No. 14-753V (ECF)
v.	)	Special Master Sanders
	)	
SECRETARY OF HEALTH	)	
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
_____	)	

**RESPONDENT’S PROFFER ON AWARD OF DAMAGES**

On July 9, 2021, the Special Master issued a Ruling on Entitlement finding petitioner entitled to Vaccine Act compensation for a small fiber neuropathy following an influenza vaccine. ECF Doc. 94. Respondent now proffers that petitioner receive a compensation award consisting of a lump sum of **\$245,126.01**, which amount includes \$225,000.00 for pain and suffering; \$10,126.01 for past unreimbursed expenses; and \$10,000.00 for future unreimbursable medical expenses, in the form of a check payable to petitioner, E.M.<sup>1</sup> This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner is entitled.<sup>2</sup>

Petitioner agrees with the proffered award of \$245,126.01.<sup>3</sup>

<sup>1</sup> Petitioner is a competent adult. No guardianship is required.

<sup>2</sup> 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.

<sup>3</sup> This proffer does not include any award for attorneys’ fees and costs that may be awarded pursuant to 42 U.S.C. § 300aa-15(e).

Respectfully submitted,

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Principal Deputy Assistant Attorney General

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Director  
Torts Branch, Civil Division

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s/Voris E. Johnson, Jr.  
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Date: February 12, 2024