

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1042V

Filed: March 25, 2016

Unpublished

SALLY LESSNER,

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Petitioner,

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Ruling on Entitlement; Concession;

Influenza Vaccination;

Shoulder Injury Related to Vaccine

SECRETARY OF HEALTH

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Administration (“SIRVA”);

AND HUMAN SERVICES,

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Special Processing Unit (“SPU”)

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Respondent.

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Andrew Downing, Van Cott & Talamante, PLLC, Phoenix, AZ, for petitioner.

Michael Milmo, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On September 17, 2015, Sally Lessner (“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” or “Program”). Petitioner alleges that she suffered pain, weakness, and stiffness in her arm and shoulder caused-in-fact by the influenza vaccination she received on September 26, 2012. Petition at ¶¶ 3, 10-11. Petitioner further alleges that she has suffered the residual effects of her injury for more than six months, and neither she nor anyone else has received compensation or has filed a civil action for her injury alleged as vaccine caused. *Id.* at ¶¶ 10, 12. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 25, 2016, respondent filed her Rule 4(c) report in which she concedes that petitioner is entitled to compensation in this case. Respondent’s Rule 4(c) Report

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims’ website,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, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2012)). 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).

at 1 (ECF No.22). Specifically, respondent “has concluded that a preponderance of the evidence establishes that petitioner’s injury is consistent with a shoulder injury related to vaccine administration (“SIRVA”), and that petitioner’s injury is not due to factors unrelated to her September 26, 2012 flu vaccination.” *Id.* Furthermore, respondent agrees that petitioner has met the statutory requirements of the Vaccine Act, and “entitlement to compensation is appropriate under the terms of the Vaccine Act.” *Id.*

In view of respondent’s concession and the evidence before me, I find that petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master