

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 15-1131V

Filed: February 18, 2016

Unpublished

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SUSANNE WHIRLEY,

Petitioner,

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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Damages Decision Based on Proffer;  
Influenza (“Flu”) Vaccine; Left Shoulder  
Injury; Shoulder Injury Related to  
Vaccine Administration (“SIRVA”);  
Special Processing Unit (“SPU”)

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*Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for petitioner.*

*Debra Filteau Begley, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On October 6, 2015, Ms. Whirley filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> [the “Vaccine Act”]. Petitioner alleges that she suffered a left shoulder injury which was caused in fact by an influenza (“flu”) vaccine she received on October 3, 2014. Petition at Preamble. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 28, 2016, a ruling on entitlement was issued, finding petitioner entitled to compensation. On February 18, 2016, respondent filed a proffer on award of compensation [“Proffer”] stating petitioner should be awarded \$70,000.00, in pain and suffering and \$1,046.93, for payment of a Medicaid lien. Proffer at 1. In the Proffer, respondent represents that petitioner agrees with the proffered award. Based on the

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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

<sup>2</sup> 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).

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 the following:**

- A. A lump sum payment of \$70,000.00, in the form of a check payable to petitioner, Suzanne Whirley, and**
- B. A lump sum of \$1,046.93, representing compensation for satisfaction of the State of Illinois Medicaid lien, in the form of a check payable to petitioner and Optum. Petitioner agrees to endorse this check to Optum and agrees to mail payment to:**

Optum  
75 Remittance Drive  
Suite 6019  
Chicago, IL, 60675-6019

These amounts 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.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> 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**

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**SUSANNE WHIRLEY,**

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Petitioner,

\*

**No. 15-1131V**

CHIEF SPECIAL MASTER

NORA BETH DORSEY

v.

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**SECRETARY OF HEALTH AND**

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**HUMAN SERVICES,**

\*

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Respondent.

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

**I. Items of Compensation**

For purposes of this proffer, the term “vaccine-related” is as described in Respondent’s Rule 4(c) Report, filed on January 28, 2016, conceding entitlement in this case. Based upon the evidence of record, respondent proffers that petitioner should be awarded \$70,000.00 in pain and suffering and \$1,046.93 for payment of a Medicaid lien. The Medicaid lien represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action that the State of Illinois may have against any individual as a result of any Medicaid payments the State of Illinois has made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about October 3, 2014, under Title XIX of the Social Security Act.

These payments represent all elements of competition to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a) for her vaccine-related injury.<sup>1</sup> Petitioner agrees.

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

**II. Form of the Award**

The parties recommend that the compensation provided to petitioner should be made through lump sum payments described below, and request that the Chief Special Master's decision and the Court's judgment award the following:

- A. A lump sum of \$70,000.00 in the form of a check payable to petitioner, Suzanne Whirley, and
- B. A lump sum of \$1,046.93, representing compensation for satisfaction of the State of Illinois Medicaid lien, in the form of a check payable to petitioner and Optum. Petitioner agrees to endorse this check to Optum and agrees to mail payment to:

Optum  
75 Remittance Drive  
Suite 6019  
Chicago, IL 60675-6019

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

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA  
Director  
Torts Branch, Civil Division

VINCENT J. MATANOSKI  
Deputy Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Senior Trial Attorney  
Torts Branch, Civil Division

/s/ DEBRA A. FILTEAU BEGLEY  
DEBRA A. FILTEAU BEGLEY  
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Torts Branch, Civil Division  
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Dated: February 18, 2016