

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1426V

Filed: April 4, 2016

Unpublished

MARCELLA BENNETT,

Petitioner,

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Ruling on Entitlement; Concession;
Influenza Vaccination;
Shoulder Injury Related to Vaccine
Administration (“SIRVA”);
Special Processing Unit (“SPU”)

*Robert Bates, III, Law Offices of Tony Seaton, PLLC, Johnson City, TN, for petitioner.
Glenn MacLeod, U.S. Department of Justice, Washington, DC, for respondent.*

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On November 24, 2015, Marcella Bennett (“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 “injuries, including left shoulder injuries, rotator cuff impingement and partial tear of the anterior supraspinatus tendon, resulting from adverse effects of a [sic] influenza vaccination received on December 5, 2012.” Petition at 1; *accord.* Petition at ¶¶ 1 -5, 8. Petitioner further alleges that she has suffered the residual effects of her injury for more than six months. *Id.* at ¶ 9. Petitioner “originally filed a medical malpractice suit against Walgreens, but later voluntarily dismissed the same after conferring with the Respondent.” *Id.* at ¶ 10; see Exhibit 7 (notice and order of dismissal of petitioner’s civil action). The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims’ website,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).

On April 1, 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 at 1. Specifically, respondent "has concluded that a preponderance of evidence establishes that the injury to petitioner's left shoulder was caused-in-fact by the administration of her December 5, 2012 flu vaccine, and that petitioner's injury is not due to factors unrelated to the administration of the December 5, 2012, flu vaccine." *Id.* at 5 (citation omitted). Furthermore, respondent concluded that "the statutory six month sequela requirement has been satisfied . . . [and petitioner's] left shoulder injury is compensable under the Act as a 'caused-in-fact' shoulder injury related to vaccine administration." *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