

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-0506V

Filed: January 6, 2017

UNPUBLISHED

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TERRY BARTEE,	*	
	*	
Petitioner,	*	Damages Decision Based on Proffer;
v.	*	Influenza (“Flu”) Vaccine;
	*	Shoulder Injury Related to Vaccine
SECRETARY OF HEALTH	*	Administration (“SIRVA”);
AND HUMAN SERVICES,	*	Special Processing Unit (“SPU”)
	*	
Respondent.	*	
	*	

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*Jeffrey Pop, Attorney at Law, Beverly Hills, CA, for petitioner.*  
*Alexis Babcock, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On April 25, 2016, Terry Bartee (“petitioner”) 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” or “Program”). Petitioner alleges that he suffered injuries to his left shoulder after receiving the influenza (“flu”) vaccine on December 11, 2014. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 7, 2016, the undersigned issued a ruling on entitlement, finding petitioner entitled to compensation for his shoulder injury related to vaccine administration (“SIRVA”). On January 6, 2017, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded **\$71,450.92**, representing \$70,000.00 in compensation for actual and projected pain and suffering to

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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

which petitioner would be entitled and \$1,450.92 to satisfy the State of California lien. Proffer at 1-2. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* at 1. Based on the 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 payment as follows:**

1. **A lump sum payment of \$70,000.00**, the form of a check payable to petitioner; and
2. **A lump sum of \$1,450.92**, which amount represents reimbursement of a Medicaid lien, **in the form of a check payable jointly to petitioner and**

**Department of Health Care Services  
Recovery Branch – MS 4720  
P.O. Box 997421  
Sacramento, CA 95899-7421**

**Petitioner agrees to endorse this check to the State of California.**

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**

TERRY BARTEE,	)	
	)	
Petitioner,	)	
	)	
v.	)	<b>No. 16-506</b>
	)	<b>Chief Special Master Dorsey</b>
	)	
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	

**RESPONDENT’S PROFFER OF DAMAGES**

**I. Items of Compensation**

For the purposes of this proffer, the term “vaccine-related” is as described in Respondent’s Rule 4(c) Report filed on November 7, 2016.

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$70,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Respondent proffers that petitioner should not be awarded any past unreimbursable expenses related to her vaccine injury. Petitioner agrees.

C. Lost Wages

The parties agree that based upon the evidence of record, petitioner’s vaccine-related injury has not impaired her earning capacity. Therefore, respondent proffers that petitioner should be awarded no lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

D. Medicaid Lien

Respondent proffers that Terry Bartee should be awarded funds to satisfy the State of California lien in the amount of \$1,450.92, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of California may have against any individual as a result of any Medicaid payments the State of California has made to or on behalf of Terry Bartee from the date of his eligibility for benefits through the date of judgment in this case as a result of his vaccine-related injury suffered on or about December 11, 2014, under Title XIX of the Social Security Act.

**II. Form of the Award**

The parties recommend that compensation provided to petitioner should be made through two lump sum payments as described below and requests that the Chief Special Master's decision and the Court's judgment award the following:<sup>1</sup>

- A. a lump sum payment of \$70,000.00, representing compensation for actual and projected pain and suffering in the form of a check payable to petitioner; and
- B. a lump sum payment of \$1,450.92 representing compensation for satisfaction of the State of California Medicaid lien, payable jointly to petitioner and

Department of Health Care Services  
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P.O. Box 997421  
Sacramento, CA 95899-7421

Petitioner agrees to endorse this payment to the State of California.

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

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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 pain and suffering.

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

CATHARINE E. REEVES  
Deputy Director  
Tort Branch, Civil Division

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s/ Alexis B. Babcock  
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Dated: January 6, 2017