

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-630V

Filed: July 20, 2018

UNPUBLISHED

DIANE SCOTT,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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

Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for petitioner.

Adriana Ruth Teitel, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On May 26, 2016, 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”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) following an influenza “(flu)” vaccination she received on October 18, 2013. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 11, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for a SIRVA. On July 16, 2018, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$70,000.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

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).

proffered award. 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 a lump sum payment of \$70,000.00 in the form of a check payable to petitioner, Diane Scott.** This amount 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.³

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master

³ 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.

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SECRETARY OF HEALTH AND
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No. 16-630V
Chief Special Master Dorsey
ECF

PROFFER ON AWARD OF COMPENSATION

On January 11, 2018, the Chief Special Master issued a Ruling on Entitlement, which found that petitioner was entitled to Vaccine Act compensation for her alleged SIRVA injury.

I. Items of Compensation

Respondent proffers that based on the evidence of record, petitioner should be awarded \$70,000.00. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$70,000.00 in the form of a check payable to petitioner.²

¹ Should petitioner die prior to entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

² The parties have no objection to the proffered award of damages. Assuming the Chief Special Master issues a damages decision in conformity with this proffer, the parties intend to waive their right to seek review of such damages decision, recognizing that respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(f), to seek review of the January 11, 2018 ruling finding petitioner entitled to an award under the Vaccine Act.

Petitioner agrees. Petitioner is a competent adult, so evidence of guardianship is not required in this case.

Respectfully submitted,

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Dated: July 16, 2018