

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-1326V

Filed: November 17, 2017

UNPUBLISHED

MAY RUBY JOHNSON,

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)

Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.

Claudia Barnes Gangi, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On October 12, 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 on October 29, 2015. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 1, 2017, a ruling on entitlement was issued, finding petitioner entitled to compensation for a SIRVA. On November 17, 2017, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$85,000.00 for actual and projected pain and suffering, and \$542.24 for past unreimbursable expenses. Proffer at 1. In the Proffer, respondent represented that petitioner agrees

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

with the 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 \$85,542.24 (\$85,000.00 for actual and projected pain and suffering, and \$542.24 for past unreimbursable expenses) in the form of a check payable to petitioner, May Ruby Johnson.** 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.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

MAY RUBY JOHNSON,)	
)	
Petitioner,)	
)	
v.)	No. 16-1326V
)	Chief Special Master Dorsey
SECRETARY OF HEALTH AND)	(ECF)
HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that the Court should award May Ruby Johnson a lump sum of \$85,000.00 for her 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 the Court should award May Ruby Johnson a lump sum of \$542.24 for past unreimbursable expenses, as provided under 42 U.S.C. § 300aa-15(a)(1)(A). Petitioner agrees.

II. Form of the Award.

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a

lump sum payment of \$85,542.24, in the form of a check payable to petitioner, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

Respectfully submitted,

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/s/ Claudia B. Gangi
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Dated: November 17, 2017

¹ Should petitioner die prior to the 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.