

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-1448V

Filed: October 24, 2017

UNPUBLISHED

KATHLEEN SCARPATO,

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)

*William E. Cochran, Jr., Black McLaren Jones Ryland & Griffee, P.C., Memphis, TN , for petitioner.*

*Glenn Alexander MacLeod, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On November 2, 2016, Kathleen Scarpato (“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”). Petitioner alleges that she suffered a right shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine she received on November 3, 2014. Petition at 1-2. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 22, 2017, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On October 24, 2017, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$127,500.00.

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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

Proffer at 1. In the Proffer, respondent represented that petitioner agrees 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 \$127,500.00, in the form of a check payable to petitioner, Kathleen Scarpato**. 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.<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.

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No. 16-1448V (ECF)  
CHIEF SPECIAL MASTER  
NORA BETH DORSEY

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

On March 22, 2017, the Chief Special Master found that a preponderance of the medical evidence indicates that petitioner suffered a right shoulder injury related to vaccine administration (“SIRVA”), which was causally related to the influenza (“flu”) vaccination she received on November 3, 2014. The parties now address the amount of compensation to be awarded in this case.

**I. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$127,500.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<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 and future pain and suffering.

**II. Form of the Award**

Petitioner is a competent adult. Accordingly, the parties recommend that the compensation provided to petitioner should be made through a lump sum payment of \$127,500.00 in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

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Acting Assistant Attorney General

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s/ **GLENN A. MACLEOD**  
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DATE: October 24, 2017