

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-1537V

Filed: December 7, 2017

UNPUBLISHED

SHERI ROCCA,

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)

Bruce William Slane, Law Office of Bruce W. Slane, P.C., White Plains, NY, for petitioner.

Sarah Christina Duncan, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On November 17, 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”) in her left shoulder following receipt of an influenza (“flu”) vaccination on November 16, 1015. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 7, 2017, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On December 7, 2017, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded a total of \$167,293.39, representing \$50,575.66 in compensation for lost earnings, \$110,000.00

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

in compensation for pain and suffering, and \$6,717.73 in compensation for past unreimbursable expenses. Proffer at 1-2. 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 \$167,293.39, representing \$50,575.66 in compensation for lost earnings, \$110,000.00 in compensation for pain and suffering, and \$6,717.73 in compensation for past unreimbursable expenses, in the form of a check payable to petitioner, Sheri Rocca.** 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**

SHERI ROCCA,)	
)	
Petitioner,)	
)	
v.)	No. 16-1537V
)	Chief Special Master Dorsey
SECRETARY OF HEALTH AND HUMAN)	ECF
SERVICES,)	
)	
Respondent.)	
)	
)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Lost Earnings

The parties agree that based upon the evidence of record, Sheri Rocca has suffered past and future loss of earnings as a result of her vaccine-related injury. Therefore, respondent proffers that the Court should award Sheri Rocca a lump sum of \$50,575.66 for her past and future lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A).

Petitioner agrees.

B. Pain and Suffering

Respondent proffers that Sheri Rocca should be awarded \$110,000.00 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.

C. Past Unreimbursable Expenses

Evidence supplied by petitioner documents Sheri Rocca's expenditure of past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$6,717.73, as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(1)(B). 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 Sheri Rocca should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹: a lump sum payment of \$167,293.39, representing compensation for lost earnings (\$50,575.66), pain and suffering (\$110,000.00), and past unreimbursable expenses (\$6,717.73), in the form of a check payable to petitioner, Sheri Rocca.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Sheri Rocca: **\$167,293.39**

Respectfully submitted,

CHAD A. READLER
Principal Deputy Assistant Attorney General

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

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

¹ 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 lost earnings and future pain and suffering.

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

s/ Sarah C. Duncan
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