

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-1625V

Filed: September 26, 2017

UNPUBLISHED

JANINE FONFARA,

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)

*Anne C. Toale, Maglio Christopher & Toale, PA, Sarasota, FL, for petitioner.*

*Jason C. Bougere, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On December 7, 2016, 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 alleged that she suffered an injury to her left shoulder as a result of receiving an influenza (“flu”) vaccine on October 13, 2015. Petition at 1. The case was assigned to the Special Processing Unit (“SPU”) of the Office of Special Masters.

On June 29, 2017, the undersigned issued a ruling on entitlement, finding petitioner entitled to compensation for a shoulder injury related to vaccine administration (“SIRVA”). On September 26, 2017, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$137,581.40. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered

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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

award. *Id.* 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 \$137,581.40 in the form of a check payable to petitioner, Janine Fonfara.** 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.

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

JANINE FONFARA,	)	
	)	
Petitioner,	)	No. 16-1625V
	)	Chief Special Master Dorsey
v.	)	ECF
	)	
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	

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

**I. Compensation for Vaccine Injury-Related Items**

On June 29, 2017, respondent filed a Rule 4(c) Report conceding that petitioner was entitled to vaccine compensation for his Shoulder Injury Related to Vaccine Administration (“SIRVA”) injury. Respondent proffers that, based on the evidence of record, petitioner should be awarded \$137,581.40. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a)(1); 15(a)(3)(A); and 15(a)(4). Petitioner agrees.

**II. Form of the Award**

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below, and requests that the special master’s decision and the Court’s judgment award the following:<sup>1</sup>

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<sup>1</sup> 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.

- A. A lump sum payment of \$137,581.40 in the form of a check payable to petitioner, Janine Fonfara. This amount accounts for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Acting Assistant Attorney General

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Director  
Torts Branch, Civil Division

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/s/ Jason C. Bougere  
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Dated: September 26, 2017