

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-89V

Filed: May 24, 2018

UNPUBLISHED

JANICE KILPATRICK,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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

*Amber Diane Wilson, Maglio Christopher & Toale, PA, Washington, DC, for petitioner.
Claudia Barnes Gangi, U.S. Department of Justice, Washington, DC, for respondent.*

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On January 23, 2017, 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 receipt of a Prevnar 13 pneumococcal vaccine on November 12, 2015. Petition at 3. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 20, 2017, a ruling on entitlement was issued, finding petitioner entitled to compensation for a SIRVA. On May 21, 2018, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$95,301.10 comprised of \$95,000.00 for pain and suffering; and \$301.10 for past out-of-pocket medical 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¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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 \$95,301.10 in the form of a check payable to petitioner, Janice Kilpatrick.** 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

_____)	
JANICE KILPATRICK,)	
)	
Petitioner,)	
)	No. 17-89V
v.)	Chief Special Master Dorsey
)	ECF
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

On July 20, 2017, respondent conceded that entitlement to compensation was appropriate under the terms of the Vaccine Act. That same day, Chief Special Master Dorsey issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for her Shoulder Injury Related to Vaccine Administration (“SIRVA”). Based upon the evidence of record, respondent proffers that petitioner should be awarded \$95,301.10. The award is comprised of the following: \$95,000.00 for pain and suffering; and \$301.10 for past out-of-pocket medical expenses. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

The parties recommend that compensation provided to petitioner should be made through a lump sum payment of **\$95,301.10**, in the form of a check payable to petitioner.¹ Petitioner agrees.

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 pain and suffering.

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

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

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

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Assistant Director
Torts Branch, Civil Division

/s/Claudia B. Gangi
CLAUDIA B. GANGI
Senior Trial Attorney
Torts Branch, Civil Division
U. S. Department of Justice
P.O. Box 146, Benjamin Franklin Station
Washington, D.C. 20044-0146
Direct dial: (202) 616-4138
Email: claudia.gangi@usdoj.gov

Dated: May 21, 2018