

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-691V

Filed: March 23, 2018

UNPUBLISHED

DARLENE DINKEL,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Guillain-
Barre Syndrome (GBS)

Lawrence Gene Michel, Kennedy, Berkley, et al., Salina, KS, for petitioner.

Traci R. Patton, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On May 24, 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 Guillain-Barre Syndrome (“GBS”) and vocal cord dysfunction resulting from treatment due to an influenza (“flu”) vaccination administered on December 15, 2014. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 30, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for GBS. On March 20, 2018, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$132,000.00 comprised of \$125,000.00 for pain and suffering and \$7,000.00 for lost wages. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

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 \$132,000.00 (comprised of \$125,000.00 for pain and suffering and \$7,000.00 for lost wages) in the form of a check payable to petitioner, Darlene Dinkel.** 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

| | | |
|-------------------------------|---|-----------------------------|
| <hr/> | | |
| DARLENE DINKEL, |) | |
| |) | |
| Petitioner, |) | |
| v. |) | No. 17-691V |
| |) | Chief Special Master Dorsey |
| SECRETARY OF HEALTH AND HUMAN |) | ECF |
| SERVICES, |) | |
| |) | |
| Respondent. |) | |
| <hr/> | | |

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On May 24, 2017, Darlene Dinkel (petitioner) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act” or “the Act”), 42 U.S.C. §§ 300aa-1 to -34. Petitioner alleges that she suffered “Guillain-Barre Syndrome (“GBS”) and vocal cord dysfunction resulting from treatment” due to an influenza (“flu”) vaccine administered to her on December 15, 2014. Petition at 1. On January 24, 2018, respondent filed a Rule 4(c) Report conceding that entitlement to compensation was appropriate under the terms of the Vaccine Act. Thereafter, on January 30, 2018, Chief Special Master Dorsey issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$132,000.00. The award is comprised of the following: \$125,000.00 for pain and suffering; and \$7,000.00 for lost wages. 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 **\$132,000.00**, in the form of a check payable to petitioner.¹ Petitioner agrees.

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

GABRIELLE M. FIELDING
Assistant Director
Torts Branch, Civil Division

s/ Traci R. Patton
TRACI R. PATTON
Senior Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Telephone: (202) 353-1589

Dated: March 20, 2018

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.