

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: November 29, 2021

| | | |
|---------------------|---|-----------------------------------|
| * * * * * | * | |
| SAMUEL HUTCHENS, | * | No. 17-797V |
| | * | |
| Petitioner, | * | Special Master Sanders |
| | * | |
| v. | * | |
| | * | |
| SECRETARY OF HEALTH | * | Ruling on Entitlement; Influenza |
| AND HUMAN SERVICES, | * | ("Flu") Vaccine; Shoulder Injury |
| | * | Related to Vaccine Administration |
| Respondent. | * | ("SIRVA") |
| * * * * * | * | |

RULING ON ENTITLEMENT¹

On June 14, 2017, Samuel Hutchens ("Petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program ("the Program"). Pet. at 1, ECF No. 1; 42 U.S.C. § 300aa-10 to -34 (2012). Petitioner filed an amended petition on July 26, 2017. Am. Pet. at 1, ECF No. 9. Petitioner alleges that he developed a shoulder injury related to vaccine administration ("SIRVA") as a result of an influenza ("flu") vaccination he received on October 17, 2014. *Id.* at 1.

On December 29, 2017, Respondent filed a report pursuant to Vaccine Rule 4(c), recommending compensation be denied because Petitioner's records did not show the onset of his shoulder pain within forty-eight hours of his flu vaccine. Resp't's Report at 1, ECF No. 16. I held a fact hearing with the parties on November 20, 2019, to determine the onset of Petitioner's shoulder pain. *See* ECF Nos. 41, 44.

On August 31, 2021, I issued a fact ruling finding Petitioner established by preponderant evidence that he experienced the onset of his left shoulder pain on the day he received his flu vaccine. Fact Ruling at 1, ECF No. 46. Respondent filed an amended Rule 4(c) report on November 12, 2021, advising that Respondent "will not defend the case on other grounds" and noting that "[P]etitioner has otherwise satisfied the criteria set forth in the Vaccine Injury Table and the

¹ This Ruling shall be posted 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). **This means the Ruling will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted Ruling. If, upon review, I agree that the identified material fits within the requirements of that provision, such material will be deleted from public access.

Qualifications and Aids to Interpretation (“QAI”) for SIRVA.” Am. Resp’t’s Report at 2, ECF No. 49 (citing 42 C.F.R. §§ 100.3(a)(XIV), (c)(10)). Specifically, Respondent noted that Petitioner had no recent history of pain, inflammation, or dysfunction of his left shoulder; the onset of his pain occurred within forty-eight hours after receipt of an intramuscular vaccine; his pain was limited to the shoulder in which the vaccine was administered; and no other condition or abnormality, such as brachial neuritis, has been identified to explain his left shoulder pain. Am. Resp’t’s Report at 4–5 (citing §§ 100.3(a), (c)(10)). Respondent further noted Petitioner suffered the residual effects of his condition for more than six months. Am. Resp’t’s Report at 5 (citing 42 U.S.C. § 300aa-11(c)(1)(D)(i)). Therefore, Respondent “does not dispute that [P]etitioner has satisfied all legal prerequisites for compensation under the [Vaccine] Act.” Am. Resp’t’s Report at 5.

A special master may determine whether a petitioner is entitled to compensation based upon the record. A hearing is not required. § 300aa-13; Vaccine Rule 8(d). In light of Respondent's concession and my review of the record, I find that Petitioner is entitled to compensation. This matter shall now proceed to the damages phase.

IT IS SO ORDERED.

s/Herbrina D. Sanders
Herbrina D. Sanders
Special Master