

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1320V

Filed: December 10, 2018

UNPUBLISHED

ROBERT MALWITZ,

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)

John Caldwell, Maglio Christopher & Toale, PA, Sarasota, FL, for petitioner.

Linda Sara Renzi, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On September 25, 2017, Robert Malwitz (“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 he suffered Guillain-Barré syndrome (“GBS”) as a result of an influenza (“flu”) vaccine and pneumococcal conjugate vaccine (“Prevnar-13”) administered to him on September 14, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 21, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for GBS. On December 10, 2018, respondent filed a proffer on award

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** 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. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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).

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).

of compensation (“Proffer”) indicating petitioner should be awarded a lump sum payment of \$102,752.51 (representing \$100,000.00 for past and future pain and suffering, and \$2,752.51 for past unreimbursed expenses). Proffer at 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. *Id.*

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$102,752.51** (representing \$100,000.00 for past and future pain and suffering, and \$2,752.51 for past unreimbursed expenses) **in the form of a check payable to petitioner, Robert Malwitz**. This amount represents compensation for all damages that would be available under § 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**

ROBERT MALWITZ,)	
)	
Petitioner,)	No. 17-1320V
)	Chief Special Master
v.)	Nora Beth Dorsey
)	ECF
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items

On June 21, 2018, respondent filed a Rule 4 (c) Report conceding entitlement in this case. On June 21, 2018, the Chief Special Master issued a Ruling on Entitlement finding that petitioner is entitled to vaccine compensation. Respondent proffers based on the evidence in the record that petitioner should be awarded \$102,752.51. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Items of Compensation and Form of the Award

The parties recommend that the compensation provided to petitioner should be made through lump sum payments as described below, and request that the Special Master’s decision and the Court’s judgment award the following:¹

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 medical expenses, future lost earnings, and future pain and suffering.

A. Petitioner’s Damages

A lump sum payment of \$102,752.51 (representing \$100,000.00 for past and future pain and suffering, and \$2,752.51 for past unreimbursed expenses), in the form of a check payable to petitioner, Robert Malwitz. This amount accounts for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

B. Guardianship

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

III. Summary of Recommended Payments Following Judgment

A. Lump sum paid to petitioner **\$102,752.51**

Respectfully submitted,

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s/Linda S. Renzi
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DATE: December 10, 2018