

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1641V

Filed: May 7, 2019

UNPUBLISHED

ROSEMARY MORGAN-LEE,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Haemophilus influenzae type b (Hib)
Vaccine; Shoulder Injury Related to
Vaccine Administration (SIRVA)

Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.

Adriana Ruth Teitel, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On October 31, 2017, Rosemary Morgan-Lee (“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 filed an amended petition on January 29, 2018, where she alleged that she received a Haemophilus B Conjugate (“HIB”) vaccination on December 31, 2016, and subsequently suffered immediate “acute pain in her right shoulder.” Amended Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On September 28, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation. On May 7, 2019, respondent filed a proffer on award of

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 Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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

compensation (“Proffer”) indicating petitioner should be awarded \$108,028.31, comprised of \$105,000.00 for pain and suffering, \$2,054.54 for petitioner’s unreimbursable out-of-pocket expenses, and \$973.77 for payment of a Medicaid lien. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered 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 the following:**

- a) a lump sum payment of **\$107,054.54** (comprised of \$105,000.00 for pain and suffering and \$2,054.54 for unreimbursable out-of-pocket expenses), in the form of a check payable to petitioner, **Rosemary Morgan-Lee**, and
- b) lump sum payment of **\$973.77**, representing compensation for full satisfaction of the State of South Carolina Medicaid lien, in the form of a check payable jointly to petitioner and

Department of Health and Human Services
Reporting and Receivables
P.O. Box 8355
Columbia, SC 29202-9189
Case Number:C-19-001945

Petitioner agrees to endorse this payment to the South Carolina DHHS. These amounts represent 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**

ROSEMARY MORGAN-LEE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 17-1641V
Chief Special Master Dorsey
ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items

On September 28, 2018, respondent filed a Rule 4(c) Report conceding that petitioner is entitled to vaccine compensation for his Shoulder Injury Related to Vaccine Administration ("SIRVA") injury. The Chief Special Master's Ruling on Entitlement, adopting respondent's recommendation, was issued the same day, on September 28, 2018.

Based upon the evidence of record, respondent proffers that petitioner¹ should be awarded \$108,028.31. This is comprised of pain and suffering (\$105,000.00), unreimbursable out of pocket expenses (\$2,054.54), and payment of a Medicaid lien (\$973.77), and represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).² Petitioner agrees.

¹ Petitioner is a competent adult, therefore evidence of guardianship is not required in this case.

² 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 and future pain and suffering.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through:

- a) lump sum payment of **\$973.77**, representing compensation for full satisfaction of the State of South Carolina Medicaid lien, in the form of a check payable jointly to petitioner and

Department of Health and Human Services
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Petitioner agrees to endorse this payment to the South Carolina DHHS.

- b) a lump sum of **\$107,054.54** in the form of a check payable to petitioner. This amount represents compensation for all remaining damages that would be available under 42 U.S.C. § 300aa-15(a).

Petitioner agrees.

Respectfully submitted,

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Torts Branch, Civil Division

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/s/ Adriana Teitel
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Dated: May 7, 2019