

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: June 6, 2022

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JANELL ROSS,

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UNPUBLISHED

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Petitioner,

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No. 17-1992V

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v.

*

Special Master Gowen

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Influenza (“Flu”); Shoulder Injury
Related to Vaccine Administration
(SIRVA); Proffer.

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Respondent.

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Leah V. Durant, Law Offices of Leah Durant, Washington, D.C., for petitioner.

Colleen C. Hartley, U.S. Department of Justice, Washington, D.C., for respondent.

DECISION ON DAMAGES¹

On December 20, 2017, Janell Ross (“petitioner”) filed a petition in the National Vaccine Injury Compensation Program.² Petition (ECF No. 1). Petitioner alleged that as a result of receiving the influenza (“flu”) vaccine on January 9, 2017, she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”). On October 13, 2021, the undersigned issued a Ruling on Entitlement, finding that petitioner established she suffered a Table SIRVA and was entitled to compensation. Ruling on Entitlement (ECF No. 76).

On June 6, 2022, respondent filed a Proffer of Award of Compensation, which indicates petitioner’s agreement to compensation on the terms set forth therein. Proffer (ECF No. 90). The proffer is attached hereto as Appendix A.

¹ Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), because this opinion contains a reasoned explanation for the action in this case, I intend to post it on the website of the United States Court of Federal Claims. The court’s website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. Before the opinion is posted on the court’s website, each party has 14 days to file a motion requesting redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). An objecting party must provide the court with a proposed redacted version of the opinion. *Id.* If neither party files a motion for redaction within 14 days, the opinion will be posted on the court’s website without any changes. *Id.*

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to 34 (2012) (hereinafter “Vaccine Act” or “the Act”). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

Consistent with the terms in the attached Proffer, I hereby award the following in compensation for all damages that would be available under 42 U.S.C. §300aa-15(a):

- 1) A lump sum payment of \$97,500.00 (for pain and suffering) in the form of a check made payable to petitioner.**

The Clerk of the Court is directed to **ENTER JUDGMENT** in accordance with this decision.³

IT IS SO ORDERED.

s/Thomas L. Gowen
Thomas L. Gowen
Special Master

³ Entry of judgment is expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).

\$97,500.00, consisting of pain and suffering, which 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

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Special Master's decision and the Court's judgment award the following²: a lump sum payment of \$97,500.00, in the form of a check payable to petitioner.

III. Summary of Recommended Payment Following Judgment

Lump sum payable to petitioner, Janell Ross: **\$97,500.00**

Respectfully submitted,

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Principal Deputy Assistant Attorney General

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Acting Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

DARRYL R. WISHARD
Assistant Director
Torts Branch, Civil Division

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 lost earnings and future pain and suffering.

/s/ Colleen C. Hartley
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