

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-57V

Filed: November 8, 2022

UNPUBLISHED

BECKY LAYNE,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Master Horner

Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

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

*Jamica Littles, U.S. Department of Justice, Washington, DC, for respondent.*

## **DECISION AWARDING DAMAGES**<sup>1</sup>

On January 11, 2018, Becky Layne filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”). (ECF No. 1.)

On July 12, 2022, a ruling on entitlement was issued, finding petitioner entitled to compensation for her SIRVA. (ECF No. 60.) On November 8, 2022, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$137,500.00 in pain and suffering and \$21,247.24 for past unreimbursable expenses for a total of \$158,747.24. (ECF No. 70.) In the Proffer, respondent represented that petitioner agrees with the proffered award. (*Id.*) Based on the record as a whole, I find that petitioner is entitled to an award as stated in the Proffer.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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). **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, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755.

Pursuant to the terms stated in the attached Proffer, **I award petitioner a lump sum of \$158,747.24, representing \$137,500.00 in compensation for pain and suffering and \$21,247.24 for past unreimbursable expenses, in the form of a check payable to petitioner.** 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.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Daniel T. Horner**

Daniel T. Horner

Special Master

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<sup>3</sup> 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.

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ECF

**PROFFER ON AWARD OF COMPENSATION**

On October 20, 2020, petitioner filed a Motion for a Ruling on the Record (“Motion”) arguing that she has established entitlement to compensation for a shoulder injury related to vaccine administration. ECF No. 49. Respondent filed his Response to Petitioner’s Motion on February 5, 2021, recommending that entitlement to compensation be denied. ECF No. 51. Petitioner filed her Reply to respondent’s Response to her Motion on February 12, 2021. ECF No. 52. On July 12, 2022, the Court issued a Ruling on Entitlement, finding that petitioner is entitled to compensation.<sup>1</sup> ECF No. 60.

**I. Items of Compensation**

A. Pain and Suffering

Based on the evidence of record, respondent proffers that petitioner should be awarded \$137,500.00 in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

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<sup>1</sup> Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the Court issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the July 12, 2022, entitlement decision.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that she incurred past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$21,247.24. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>2</sup> 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 Court provide petitioner a lump sum payment of **\$158,747.24**, in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

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<sup>2</sup> Should petitioner die prior to the 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.

/s/ Jamica M. Littles  
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Dated: November 8, 2022