

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-0350V

Filed: May 21, 2019

UNPUBLISHED

KATHLEEN GULLO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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

Bridget Candace McCullough, Muller Brazil, LLP, Dresher, PA, for petitioner.
Jeffrey T. Sprague, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On March 7, 2018, 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 she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza vaccination received on October 13, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 4, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for her SIRVA. On May 21, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$130,000.00 in the form of a check payable to petitioner and \$1,960.96, representing compensation for

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 Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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

satisfaction of the State of California Medicaid lien, in the form set forth below. Proffer at 1-2. 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 a lump sum payment of \$130,000.00 in the form of a check payable to petitioner, Kathleen Gullo, and a lump sum payment of \$1,960.96, representing compensation for satisfaction of the State of California Medicaid lien, in the form of a check payable jointly to petitioner and:**

**Department of Health Care Services
Recovery Branch – MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421
(Ref# C96013915D-VAC03)**

Petitioner agrees to endorse a check to the State of California for satisfaction of the Medicaid lien.

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**

| | | |
|---------------------|---|-----------------------------|
| KATHLEEN GULLO, |) | |
| |) | |
| Petitioner, |) | No. 18-350V ECF |
| |) | |
| v. |) | Chief Special Master Dorsey |
| |) | |
| SECRETARY OF HEALTH |) | |
| AND HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On March 7, 2018, Kathleen Gullo (“petitioner”) filed a petition for compensation (“petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. She alleges that, as a result of receiving the influenza vaccine on October 13, 2016, she suffered from a left shoulder injury related to vaccine administration (“SIRVA”).

Petitioner. On March 4, 2019, respondent filed his Vaccine Rule 4(c) report, conceding SIRVA as a Table injury. On March 4, 2019, the Chief Special Master issued a ruling on entitlement, finding that petitioner was entitled to compensation for SIRVA.

II. Items of Compensation

A. Pain and Suffering

Based upon the evidence of record, respondent proffers that petitioner should be awarded a lump sum of **\$130,000.00** for pain and suffering, paid in the form of a check to petitioner.

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

B. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the State of California Medicaid lien in the amount of **\$1,960.96**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of California may have against any individual as a result of any Medicaid payments the State of California has made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about October 13, 2016 under Title XIX of the Social Security Act.

These amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

III. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a combination of lump sum payments as described below, and requests that the special master's decision and the Court's judgment award the following:

- A. A lump sum payment of **\$130,000.00** in the form of a check payable to petitioner;
and
- B. A lump sum payment of **\$1,960.96**, representing compensation for satisfaction of the State of California Medicaid lien, in the form of a check payable jointly to petitioner
and:

Department of Health Care Services
Recovery Branch - MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421
(Ref# C96013915D-VAC03)

Petitioner agrees to endorse a check to the State of California for satisfaction of the Medicaid lien.²

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

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

GABRIELLE M. FIELDING
Assistant Director
Torts Branch, Civil Division

/s/Jeffrey T. Sprague
JEFFREY T. SPRAGUE
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U. S. Department of Justice
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Washington, D.C. 20044-0146
Direct dial: (202) 616-4179
Fax: (202) 616-4310

Dated: May 21, 2019

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.