

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 18-0495V

Filed: May 31, 2019

UNPUBLISHED

BETH RAITER,

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)

*Howard Dale Mishkind, Mishkind Law Firm Co., L.P.A., Beachwood, Ohio, for petitioner.  
Christine Mary Becer, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On April 4, 2018, petitioner 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 the Table injury of shoulder injury related to vaccine administration (“SIRVA”) after receiving an influenza vaccination on September 10, 2015. Petition at ¶¶ 2-3. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 23, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for her SIRVA. On May 30, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$67,500.00. 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.

<sup>1</sup> 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 Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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).

<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, **the undersigned awards petitioner a lump sum payment of \$67,500.00 in the form of a check payable to petitioner, Beth Raiter.** 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/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief 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.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

|                         |   |                             |
|-------------------------|---|-----------------------------|
| BETH RAITER,            | ) |                             |
|                         | ) |                             |
| Petitioner,             | ) |                             |
|                         | ) |                             |
| v.                      | ) | No. 18-495V                 |
|                         | ) | Chief Special Master Dorsey |
|                         | ) | ECF                         |
| SECRETARY OF HEALTH AND | ) |                             |
| HUMAN SERVICES,         | ) |                             |
|                         | ) |                             |
| Respondent.             | ) |                             |

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

On April 23, 2019, respondent filed a Vaccine Rule 4(c) report concluding that petitioner suffered an injury that is compensable under the National Childhood Vaccine Injury Act of 1986, as amended, 42 U.S.C. §§300aa-10 to -34. Accordingly, on April 23, 2019, the Chief Special Master issued a Ruling on Entitlement.

**I. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$67,500.00 which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>1</sup> Petitioner agrees.

**II. Form of the Award**

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment of \$67,500.00 in the form of a check payable to petitioner.

Petitioner agrees.

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<sup>1</sup> 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.

Respectfully submitted,

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s/Christine Mary Becer  
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Date: May 30, 2019