

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-506V

UNPUBLISHED

BICH NGOC TO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: September 28, 2020

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Tetanus Diphtheria acellular
Pertussis (Tdap) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Hoa Xuan Manh, Charles H. Manh, P.C., Westminster, CA, for petitioner.

Camille Michelle Collett, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On April 6, 2018, Bich Ngoc To 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 right shoulder injury as a result of a tetanus-diphtheria-acellular pertussis (“Tdap”) vaccine administered on April 28, 2017. Petition at 2, 5. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 3, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a shoulder injury related to vaccine administration. On September 25, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$147,815.81. Proffer at 1-2. In the Proffer, Respondent

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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.

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).

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.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner the following:**

- **A lump sum payment of \$140,604.50 (representing compensation in the amount of \$115,000.00 in pain and suffering, and \$25,604.50 in future unreimbursable medical expenses, reduced to net present value) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).
- **A lump sum payment of \$7,211.31, representing compensation for satisfaction of the State of California Medi-Cal lien, payable jointly to Petitioner and to:**

State of California—Health and Human Services
Department of Health Care Services
Recovery Branch – MS 4720
PO Box 997421
Sacramento, CA 95899-7421
DHCS account number: C95607513D-VAC03

Petitioner agrees to endorse this payment to the Medi-Cal program.

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
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

BICH NGOC TO,)	
)	
Petitioner,)	No. 18-506V
)	Chief Special Master
v.)	Brian Corcoran
)	ECF
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items:

On March 30, 2020, respondent conceded that entitlement to compensation for a shoulder injury related to vaccine administration (“SIRVA”) was appropriate under the terms of the Vaccine Act. ECF No. 44. On April 3, 2020, Chief Special Master Corcoran issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for SIRVA as a result of a tetanus-diphtheria-acellular pertussis vaccination. ECF No. 45. Respondent proffers that based on the evidence of record, petitioner, Bich Ngoc To, should be awarded **\$140,604.50** (including \$115,000.00 in pain and suffering, and \$25,604.50 in future unreimburseable medical expenses, reduced to net present value). This amount represents all elements of compensation to which petitioner would be entitled under **42 U.S.C. § 300aa-15(a)**. Petitioner agrees.

Respondent further proffers that petitioner, Bich Ngoc To, should be awarded funds to satisfy, in full, the State of California Medi-Cal lien in the amount of **\$7,211.31**, which represents 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 Medi-Cal payments the State of

California has made to or on behalf of Bich Ngoc To from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury, under Title XIX of the Social Security Act.

II. Form of the Award:

The parties recommend that the compensation provided to Bich Ngoc To should be made through two lump sum payments as described below, and request that the special master's decision and the Court's judgment award the following:¹

- (1) A lump sum payment of **\$140,604.50**, in the form of a check payable to petitioner, Bich Ngoc To. This amount accounts for all elements of compensation under **42 U.S.C. § 300aa-15(a)** to which petitioner would be entitled; and
- (2) A lump sum payment of **\$7,211.31**, representing compensation for satisfaction of the State of California Medi-Cal lien, payable jointly to petitioner and to:

State of California—Health and Human Services
Department of Health Care Services
Recovery Branch – MS 4720
PO Box 997421
Sacramento, CA 95899-7421
DHCS account number: C95607513D-VAC03

Petitioner agrees to endorse this payment to the Medi-Cal program.

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

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

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

¹ 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 out-of-pocket medical expenses.

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

DARRYL R. WISHARD
Assistant Director
Torts Branch, Civil Division

s/Camille M. Collett
CAMILLE M. COLLETT
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Telephone: (202) 616-4098

Dated: September 25, 2020