

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-768V

Filed: September 17, 2019

UNPUBLISHED

DAYANE PENDERIS,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Guillain-  
Barre Syndrome (GBS)

*Danielle Anne Strait, Maglio Christopher & Toale, PA, Seattle, WA, for petitioner.  
Althea Walker Davis, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On May 31, 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 Guillain-Barre Syndrome (“GBS”) as a result of the influenza (“flu”) vaccination administered on November 14, 2016. Petition at 1-3. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 21, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for her GBS injury. On September 16, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$170,000.00 for pain and suffering and \$8,546.95 for past out of pocket medical

---

<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 Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

expenses. Proffer at 1. Respondent further indicated that petitioner should be awarded funds to satisfy, in full, the State of California Medicaid lien in the amount of \$42,369.61. *Id.* at 1-2. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* at 1. 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 the following:**

- (1) A lump sum payment of \$178,546.95 (representing compensation in the amount of \$170,000.00 for pain and suffering and \$8,546.95 for past out of pocket medical expenses) in the form of a check payable to petitioner, Dayane Penderis.**
- (2) A lump sum payment of \$42,369.61, representing compensation for satisfaction of the State of California Medicaid lien, payable jointly to petitioner and to:**

**Department of Health Care Services  
DHCS account number C94746311F-VAC02  
Recovery Branch – MS 4720  
P.O. Box 997421  
Sacramento, CA 95899-7421**

Petitioner agrees to endorse this payment to the Department of Health Care Services. These amounts represent 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

---

<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

DAYANE PENDERIS,	)	
	)	
Petitioner,	)	No. 18-768V
	)	Chief Special Master
v.	)	Nora Beth Dorsey
	)	SPU
SECRETARY OF HEALTH	)	
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

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

On May 31, 2018, Dayane Penderis (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), as amended. Respondent conceded petitioner’s entitlement to compensation in his Rule 4(c) Report filed on May 17, 2019. Based on Respondent’s Rule 4(c) Report, on May 21, 2019, Chief Special Master Dorsey found petitioner entitled to compensation for her Guillain-Barré Syndrome.

**I. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$178,546.95. The award is comprised of \$170,000.00 for pain and suffering, and \$8,546.95 for past out of pocket medical expenses. This 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, Dayane Penderis, should be awarded funds to satisfy, in full, the State of California Medicaid lien in the amount of \$42,369.61 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 Medicaid payments the

State of California has made to or on behalf of Dayane Penderis 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 Dayane Penderis should be made through two lump sum payments as described below, and request that the Chief Special Master's decision and the Court's judgment award the following:<sup>1</sup>

- (1) A lump sum payment of \$178,546.95 in the form of a check payable to petitioner, Dayane Penderis. 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 \$42,369.61, representing compensation for satisfaction of the State of California Medicaid lien, payable jointly to petitioner and to:

**Department of Health Care Services  
DHCS account number C94746311F-VAC02  
Recovery Branch – MS 4720  
P.O. Box 997421  
Sacramento, CA 95899-7421**

Petitioner agrees to endorse this payment to the Department of Health Care Services.

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

---

<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 and future pain and suffering.

CATHARINE E. REEVES  
Deputy Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Assistant Director  
Torts Branch, Civil Division

s/Althea Walker Davis  
ALTHEA WALKER DAVIS  
Senior Trial Counsel  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Tel: (202) 616-0515

DATED: September 16, 2019