

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0804V

UNPUBLISHED

MICHAEL THOMAS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 9, 2022

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

Leah Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for Petitioner.

Ronalda Kosh, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On May 31, 2019, Michael Thomas 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 he suffered a right shoulder injury related to vaccine administration (SIRVA) as a result of an influenza (“flu”) vaccination received on September 16, 2018. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 29, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a right SIRVA. On February 9, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$62,951.02. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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 section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

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 a lump sum payment of \$62,951.02 in the form of a check payable to Petitioner**, consisting of the following:

1. **\$60,000.00 in pain and suffering; and**
2. **\$2,951.02 in past unreimbursable expenses.**

These amounts represent compensation for all damages that would be available under Section 15(a).

The Clerk of 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**

<p>MICHAEL THOMAS,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>SECRETARY OF HEALTH AND HUMAN SERVICES,</p> <p style="text-align: center;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. 19-804V</p> <p>Chief Special Master Corcoran</p> <p>ECF</p>
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RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On May 31, 2019, Michael Thomas (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986 (“Vaccine Act” or “Act”). *See* 42 U.S.C. §§ 300aa-1 *et seq.* Petitioner alleges that he suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine administered in his right shoulder on September 16, 2018. *See* Petition at 1. On December 27, 2021, the Secretary of Health and Human Services (“respondent”) filed an Amended Vaccine Rule 4(c) Report advising that, in light of Chief Special Master Corcoran’s Findings of Fact ruling that petitioner received the flu vaccine in his right arm, and the medical evidence submitted in this case, respondent did not dispute that petitioner had satisfied all legal prerequisites for compensation under the Vaccine Act. ECF No. 41. On December 29, 2021, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation.¹ ECF No. 42.

¹ Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the Chief Special Master 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 Chief Special Master’s December 29, 2021, entitlement decision.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$60,000.00 in pain and suffering.

See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that he incurred past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$2,951.02. *See* 42 U.S.C. § 300aa-15(a)(1)(B).

Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). 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 compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following²: a lump sum payment of \$62,951.02, in the form of a check payable to petitioner.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Michael Thomas: **\$62,951.02**

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

² 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 wages, future loss earnings, and future pain and suffering.

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

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
Assistant Director
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s/ RONALDA E. KOSH
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DATED: February 9, 2022