

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1090V

UNPUBLISHED

SHIRLEY OZIO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 26, 2021

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

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

Alexa Roggenkamp, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On July 29, 2019, Shirley Ozio 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 that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as defined by the Vaccine Injury Table after receiving the influenza vaccine on November 12, 2018. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 11, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her SIRVA. On March 26, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$45,688.00, representing \$45,000.00 for her actual pain and suffering and \$688.00 for her past unreimbursed expenses. Proffer at 1-2. In the Proffer, Respondent represented that

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

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 a lump sum payment of \$45,688.00, representing \$45,000.00 for her actual pain and suffering and \$688.00 for her actual unreimbursable expenses in the form of a check payable to Petitioner.** 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.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.

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Chief Special Master Corcoran
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On July 29, 2019, Shirley Ozio (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered a shoulder injury related to vaccine administration (“SIRVA”) in her left shoulder as a result of an influenza (“flu”) vaccine administered on November 12, 2018. Petition (“Pet.”) at 1. On January 8, 2021, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act, and the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation on January 11, 2021. ECF No. 25; ECF No. 26.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that Shirley Ozio should be awarded \$45,000.00 in actual pain and suffering. See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursed Expenses

Evidence supplied by petitioner documents his expenditure of past unreimbursable

expenses related to her vaccine-related injury. Respondent proffers that the petitioner is entitled to past unreimbursed expenses in the amount of \$688.00. Petitioner agrees.

The above amounts represent all elements of compensation to which petitioner would be 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 be made through a lump sum payment as described below:

A lump sum payment of \$45,688.00, in the form of a check payable to petitioner, Shirley Ozio.

Respectfully submitted,

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Acting Assistant Attorney General

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

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/s/ Alexa Roggenkamp
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