

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-1199V

UNPUBLISHED

JENNIFER NAEGEL,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 5, 2021

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

*Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.*

*Zoe Wade, U.S. Department of Justice, Washington, DC, for respondent.*

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

On August 14, 2019, Jennifer Naegel 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 a shoulder injury related to vaccine administration (“SIRVA”) as a result of receiving influenza (“flu”) and Tetanus Diphtheria acellular Pertussis (“Tdap”) vaccines on February 20, 2018. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 3, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation. On January 5, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$55,790.87. Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered

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 Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

<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).

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 \$55,790.87 (representing compensation in the amount of \$55,000.00 in pain and suffering and \$790.87 in 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.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**  
Brian H. Corcoran  
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**

JENNIFER NAEGEL,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 19-1199V
	)	Chief Special Master Corcoran
	)	ECF
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	

**PROFFER ON AWARD OF COMPENSATION**

On December 2, 2020, 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, that is, a shoulder injury related to vaccine administration (“SIRVA”), as defined in the Vaccine Injury Table. Accordingly, on December 3, 2020, the Chief Special Master issued a Ruling on Entitlement.

**I. Compensation for Vaccine Injury-Related Items**

Respondent now proffers that, based on the evidence of record, petitioner should be awarded \$55,790.87 (representing \$55,000.00 in pain and suffering and \$790.87 in unreimbursable expenses). This amount represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

The parties recommend that compensation provided to petitioner should be made through a lump sum payment described below, and request that the Chief Special Master’s decision and

the Court's judgment award the following:<sup>1</sup> a lump sum of \$55,790.87 in the form of a check payable to petitioner. Petitioner agrees.

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

Respectfully submitted,

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Acting Assistant Attorney General

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

HEATHER L. PEARLMAN  
Acting Deputy Director  
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/s/ Zoë R. Wade  
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Dated: January 5, 2021

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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 pain and suffering, and future lost wages.