

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1512V

UNPUBLISHED

WILLIAM ELIAS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: June 4, 2021

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

*Bruce William Slane, Law Office of Bruce W. Slane, P.C., White Plains, NY, for
Petitioner.*

Christine Mary Becer, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On September 30, 2019, William Elias 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 shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine administered to him on February 15, 2018. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 15, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On June 2, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$103,647.70 (comprised of \$102,500.00 for pain and suffering and \$1,147.70 for out-of-pocket

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

expenses). Proffer at 1. In the Proffer, Respondent 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 a lump sum payment of \$103,647.70 (comprised of \$102,500.00 for pain and suffering and \$1,147.70 for out-of-pocket 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.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

| | | |
|-------------------------|---|-------------------------------|
| WILLIAM ELIAS, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 19-1512V |
| |) | Chief Special Master Corcoran |
| |) | ECF |
| SECRETARY OF HEALTH AND |) | |
| HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Procedural History

On March 12, 2021, respondent filed a **Vaccine Rule 4(c)** report concluding that petitioner sustained the onset of a right shoulder injury related to vaccine administration (“SIRVA”) within the Table time period following an influenza vaccine, and therefore sustained an injury that is compensable under the terms of the National Childhood Vaccine Injury Act of 1986, as amended, **42 U.S.C. §§300aa-10** to -34. ECF No. 23. Accordingly, on March 15, 2021, the Chief Special Master issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for SIRVA following the influenza vaccine he received on February 15, 2018. ECF No. 27.

II. Items of Compensation

Respondent proffers that petitioner should be awarded \$102,500.00 for pain and suffering and \$1,147.70 for out-of-pocket expenses.

This represents all elements of compensation to which petitioner is entitled under **42 U.S.C. § 300aa-15(a)**. Petitioner agrees.

III. 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 following¹: a lump sum payment of \$103,647.70, in the form of a check payable to petitioner.

IV. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Robert Harshberger: **\$103,647.70**

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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Torts Branch, Civil Division

s/Christine Mary Becer
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DATED: June 2, 2021

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 pain and suffering.