

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1542V

UNPUBLISHED

BETHANY BUNCE CUNHA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: September 22, 2021

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

Patrick Dugan McKevitt, Whiteford, Taylor & Preston, Baltimore, MD, for Petitioner.

Jennifer Leigh Reynaud, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On October 3, 2019, Bethany Cunha 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 she suffered a left shoulder injury related to vaccine administration (SIRVA) caused by an influenza (“flu”) vaccination received on October 14, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 9, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a left SIRVA. ECF 38. On September 22, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$87,800.00. 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¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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 \$87,800.00 in the form of a check payable to Petitioner.** This consists of \$87,500.00 in actual and projected pain and suffering and \$300.00 in past unreimbursable expenses. Proffer at 1-2.

These amounts represent compensation for all damages that would be available under Section 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.

THE UNITED STATES COURT OF FEDERAL CLAIMS
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SECRETARY OF HEALTH AND
HUMAN SERVICES,

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No. 19-1542V
Chief Special Master Corcoran

PROFFER ON AWARD OF DAMAGES

On October 3, 2019, Bethany Bunce Cunha (“petitioner”) timely filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act” or “the Act”), 42 U.S.C. §§ 300aa-10 to -34. The Petition alleges that petitioner received an influenza (“flu”) vaccination on October 14, 2016, and, thereafter, suffered from a left-sided shoulder injury related to vaccine administration (“SIRVA”). *See* Petition at 1. Respondent concluded that petitioner’s alleged injury satisfies the criteria of the Vaccine Injury Table, and therefore conceded petitioner’s entitlement to compensation in his Rule 4(c) Report filed on June 8, 2021. ECF No. 37. Based on Respondent’s Rule 4(c) Report, the Court found petitioner entitled to compensation on June 9, 2021. ECF No. 38.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$87,500.00 in actual and projected pain and suffering. This amount reflects that any award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents her expenditure of past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$300.00. Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of **\$87,800.00** in the form of a check made payable to petitioner.¹ This lump sum payment represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

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

Respectfully submitted,

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¹ Should petitioner die prior to the 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 earnings, and future pain and suffering.

s/Jennifer L. Reynaud
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