

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-0265V

UNPUBLISHED

LATISHA FONTANA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 7, 2022

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

Benjamin Paul Kates, Pleban & Petruska Law, St. Louis, MO, for Petitioner.

Martin Conway Galvin, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On March 9, 2021, Latisha Fontana 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 shoulder injury as a result of an influenza (“flu”) vaccination she received on October 2, 2018. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 1, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for left-sided SIRVA. ECF No. 38. On March 7, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$67,000.00 in pain and suffering. 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.

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$67,000.00 in the form of a check payable to Petitioner.** This amount represents 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**

LATISHA FONTANA,)	
)	
Petitioner,)	
)	
v.)	No. 20-265
)	Chief Special Master Corcoran
)	ECF
SECRETARY OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On March 9, 2020, Latisha Fontana (“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”), as defined in the Vaccine Injury Table, following the administration of an influenza vaccine on October 2, 2018. Petition at 1. On October 28, 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 for a SIRVA Table injury, and on November 1, 2021, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 37; ECF No. 38.

I. Item of Compensation

Respondent proffers that petitioner should be awarded **\$67,000.00** in pain and suffering. See 42 U.S.C. § 300aa-15(a)(4). 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 and requests that the Chief Special Master's decision and the Court's judgment award the following¹: a lump sum payment of **\$67,000.00**, representing economic and noneconomic damages, in the form of a check payable to petitioner, Latisha Fontana.

III. Summary of Recommended Payment Following Judgment

Lump sum award payable to petitioner, Latisha Fontana: **\$67,000.00**.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

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

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

/s/ Martin C. Galvin
MARTIN C. GALVIN
Trial Attorney, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 305-3071
Martin.Galvin@usdoj.gov

Dated: March 7, 2022

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief.