

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 20-445V

UNPUBLISHED

MARY BETH NEIMAN,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 28, 2022

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

*Amy A. Senerth, Muller Brazil, LLP, Dresher, PA, for Petitioner.*

*Mark Kim Hellie, U.S. Department of Justice, Washington, DC, for Respondent.*

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

On April 16, 2020, Mary Beth Neiman 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”) caused by an influenza (“flu”) vaccine administered on October 26, 2018. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On September 8, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On January 28, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$56,859.63 (comprised of \$55,000.00 in pain and suffering and \$1,859.63 for unreimbursed expenses). Proffer at 1. In the Proffer, Respondent represented that Petitioner agrees

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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 Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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 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 \$56,859.63 (comprised of \$55,000.00 in pain and suffering and \$1,859.63 for unreimbursed expenses) 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.<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.

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MARY BETH NEIMAN,

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SECRETARY OF HEALTH  
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Respondent.

Case No. 20-445V (ECF)  
CHIEF SPECIAL MASTER  
CORCORAN

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

**I. Procedural History**

On September 7, 2021, respondent filed a Vaccine Rule 4(c) report concluding that Mary Beth Neiman (“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 (“the Act”). Accordingly, on September 8, 2021, the Chief Special Master issued a Ruling on Entitlement, finding that petitioner was entitled to compensation under the Act.

**II. Items of Compensation and Form of the Award**

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$56,859.63. The award is comprised of the following: \$55,000.00 for pain and suffering and \$1,859.63 for unreimbursed, out-of-pocket medical expenses. This amount represents all elements of compensation to which petitioner would be entitled under

42 U.S.C. § 300aa-15(a) regarding her October 26, 2018, influenza vaccination.

Petitioner agrees.<sup>1</sup>

**III. Form of the Award**

The parties recommend that compensation provided to petitioner should be made through a lump sum payment of \$56,859.63, 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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<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 lost earnings, and future pain and suffering.

*s/ Mark K. Hellie*

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DATED: January 28, 2022