

Corrected

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 20-721V
UNPUBLISHED

KRISTIE WISENBAKER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: September 21, 2021

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

John Robert Howie, Howie Law, PC, Dallas, TX, for Petitioner.

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

DECISION ON DAMAGES¹

On June 15, 2020, Kristie Wisenbaker 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 related to vaccine administration (“SIRVA”) as a result of the influenza (“flu”) vaccine administered on January 9, 2019. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On September 17, 2021, I issued a ruling finding Petitioner entitled to compensation for her SIRVA. ECF No. 32. On September 20, 2021, Respondent filed a

¹ Because this unpublished opinion contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

proffer on an award of compensation, to which Petitioner agrees. ECF No. 33 (attached hereto as Exhibit A). 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 \$67,500.00 for pain and suffering.** This amount represents 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.

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

KRISTIE WISENBAKER,)	
)	
Petitioner,)	
)	
v.)	No. 20-721V
)	Chief Special Master Corcoran
)	ECF
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Procedural History

On September 17, 2021, respondent filed a **Vaccine Rule 4(c)** report concluding that petitioner sustained the onset of a left 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. 30. Accordingly, on September 17, 2021, the Chief Special Master issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for SIRVA following the influenza vaccine she received on January 9, 2019. ECF No. 32.

II. Items of Compensation

Respondent proffers that petitioner should be awarded \$67,500.00 for pain and suffering.

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 \$67,500.00, in the form of a check payable to petitioner.

IV. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Kristie Wisenbaker: **\$67,500.00**

Respectfully submitted,

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Acting Assistant Attorney General

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

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s/Christine Mary Becer
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DATED: September 20, 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.