

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 20-1007V

DEBBIE MYERS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 26, 2023

Lawrence R. Cohan, Saltz, Mongeluzzi & Bendesky, Philadelphia, PA, for Petitioner.

Parisa Tabassian, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On August 13, 2020, Debbie Myers 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”), a defined Table injury, after receiving the influenza (“flu”) vaccine on October 24, 2017. Petition at 1, ¶¶ 3, 16. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 2, 2023, I issued a ruling on entitlement, finding Petitioner entitled to compensation for her SIRVA. On October 26, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$50,000.00, representing compensation for pain and suffering. Proffer at 2. In the Proffer, Respondent

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims’ website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (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 (2018).

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 \$50,000.00, representing compensation for pain and suffering 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**

DEBBIE MYERS,

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SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 20-1007V

Chief Special Master Brian H. Corcoran
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On August 13, 2020, Debbie Myers (“petitioner”) 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-1 to -34. Petitioner alleges that she received an influenza (“flu”) vaccination in her left deltoid on October 24, 2017, and thereafter suffered from a shoulder injury related to vaccine administration (“SIRVA”). *See* Petition at 1-2. On June 2, 2023, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that based on the Chief Special Master’s March 22, 2023 factual findings regarding proof of vaccination (ECF No. 43), respondent would not defend the case any further. ECF No. 47. Also on June 2, 2023, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation.¹ ECF No. 48.

¹ Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the Chief Special Master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master’s June 2, 2023, entitlement decision.

I. Items of Compensation

Respondent proffers that petitioner should be awarded \$50,000.00 in pain and suffering.

See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

This amount represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). 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 as described below and requests that the Chief Special Master's decision and the Court's judgment award the following²: a lump sum payment of \$50,000.00, in the form of a check payable to petitioner.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Debbie Myers: **\$50,000.00**

Respectfully submitted,

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Principal Deputy Assistant Attorney General

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

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Deputy Director
Torts Branch, Civil Division

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Assistant Director
Torts Branch, Civil Division

² 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, unreimbursed expenses, future lost earnings and future pain and suffering.

/s/ Parisa Tabassian
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DATED: October 26, 2023