

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1534V

UNPUBLISHED

MARIA DASILVEIRA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 24, 2023

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

Ronald Craig Homer, Conway, Homer, P.C., Boston, MA, for Petitioner.

Joseph Douglas Leavitt, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On November 5, 2020, Maria Dasilveira 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 as a result of an influenza vaccination she received on October 16, 2019. Amended Petition at ¶1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 25, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her SIRVA. On May 23, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$105,095.70 (representing \$105,000.00 in pain and suffering and \$95.70 in past unreimbursable expenses) plus \$6,490.71 to satisfy a Massachusetts Medicaid lien. Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.*

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

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 the following:**

1. **A lump sum payment of \$105,095.70 (representing \$105,000.00 in pain and suffering and \$95.70 in unreimbursable expenses) in the form of a check payable to Petitioner.**
2. **A lump sum payment of \$6,490.71, for satisfaction of a Commonwealth of Massachusetts Medicaid lien, in the form a check payable jointly to Petitioner and Commonwealth of MA- EOHHS, Casualty Recovery, P.O. Box 417811, Boston, MA 02241-7811.**

These amounts represent 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**

MARIA DASILVEIRA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 20-1534V (ECF)
Chief Special Master Corcoran

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On November 5, 2020, Maria Dasilveira (“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, alleging that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine that she received on October 16, 2019. ECF No. 1 at 1. On April 21, 2023, respondent filed a Rule 4(c) Report, recommending that compensation be awarded. ECF No. 44. On April 25, 2023, Chief Special Master Corcoran issued a Ruling on Entitlement, agreeing with respondent that petitioner’s claim meets the Table criteria for SIRVA. ECF No. 45.

I. Items of Compensation

a. Pain and Suffering

Respondent proffers that petitioner should be awarded **\$105,000.00** in pain and suffering.

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

b. Past Un-reimbursable Expenses

Evidence supplied by petitioner documents that she incurred past un-reimbursable expenses pertaining to her vaccine-related injury. Respondent proffers that petitioner should be awarded past un-reimbursable expenses in the total amount of **\$95.70**. *See* 42 U.S.C. §300aa-15(a)(1)(B). Petitioner agrees.

c. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the Commonwealth of Massachusetts Medicaid lien in the amount of **\$6,490.71**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the Commonwealth of Massachusetts may have against any individual as a result of any Medicaid payments the Commonwealth of Massachusetts has made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about October 16, 2019 under Title XIX of the Social Security Act.

These amounts represent 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 two lump sum payments as described below and requests that the Chief Special Master's decision and the Court's judgment award the following:¹

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 lost earnings and future pain and suffering.

- a. A lump sum payment of **\$105,095.70**, in the form of a check payable to petitioner; and
- b. A lump sum payment of **\$6,490.71**, representing compensation for the satisfaction of the Commonwealth of Massachusetts Medicaid lien, in the form of a check payable jointly to petitioner and:

Commonwealth of MA – EOHHS
Casualty Recovery
PO Box 417811
Boston, MA 02241-7811

Petitioner agrees to endorse the check to the above payee for satisfaction of the Medicaid lien.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

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

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

ALEXIS BABCOCK
Assistant Director
Torts Branch, Civil Division

/s/ Joseph Leavitt
JOSEPH D. LEAVITT
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Dated: May 23, 2023