

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1798V

UNPUBLISHED

GERALD MESECHER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 11, 2022

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Guillain-
Barre Syndrome (GBS)

Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for Petitioner.

Lauren Kells, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On December 8, 2020, Gerald Mesecher 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 he suffered from Guillain-Barre Syndrome (“GBS”) as a result of receiving an influenza vaccination on October 30, 2019. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 20, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for GBS. On May 5, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$213,246.27 (comprised of \$190,000.00 for pain and suffering and \$23,246.27 for past unreimbursable expenses) and \$11,027.21 to satisfy a Medicaid lien. Proffer at 2. 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¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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).

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.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner:**

- A. A lump sum payment of \$213,246.27 (comprised of \$190,000.00 for pain and suffering and \$23,246.27 for past unreimbursable expenses) in the form of a check payable to Petitioner; and**
- B. A lump sum payment of \$11,027.21, representing compensation for satisfaction of the State of California Medicaid lien, in the form of a check payable jointly to Petitioner³ and:**

**Department of Health Care Services
Recovery Branch - MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421**

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.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Petitioner agrees to endorse the check to the Department of Health Care Services for satisfaction of the Medicaid lien.

⁴ 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

_____)	
GERALD MESECHER,)	
)	
Petitioner,)	
)	No. 20-1798V
v.)	Chief Special Master Corcoran
)	ECF
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On December 8, 2020, Gerald Mesecher (“petitioner”) filed a petition for compensation (“petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. He alleged that, as a result of receiving the influenza vaccine on October 30, 2019, he suffered from Guillain-Barre Syndrome (“GBS”). *See* Petition at 1. On July 19, 2021, respondent filed his Vaccine Rule 4(c) report, concluding that petitioner suffered GBS as defined by the Vaccine Injury Table, within the Table timeframe. On July 20, 2021, Chief Special Master Corcoran issued a ruling on entitlement, finding that petitioner was entitled to compensation for a GBS Table injury.

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

II. Items of Compensation

A. Pain and Suffering

Based upon the evidence of record, respondent proffers that petitioner should be awarded a lump sum of **\$190,000.00** for pain and suffering, in the form of a check payable to petitioner.

Petitioner agrees.

B. Past Unreimbursable Expensed

Evidence supplied by petitioner documents that he incurred past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of **\$23,246.27**. *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 State of California Medicaid lien in the amount of **\$11,027.21**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of California may have against any individual as a result of any Medicaid payments the State of California 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 alleged vaccine-related injury suffered on or about October 30, 2019 under Title XIX of the Social Security Act.

The above amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

III. Form of the Award

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:²

- A. A lump sum payment of **\$213,246.27** in the form of a check payable to petitioner.
- B. A lump sum payment of **\$11,027.21**, representing compensation for satisfaction of the State of California Medicaid lien, in the form of a check payable jointly to petitioner and:

Department of Health Care Services
Recovery Branch - MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421

Petitioner agrees to endorse the check to the Department of Health Care Services for satisfaction of the Medicaid lien. Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

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

HEATHER L. PEARLMAN
Acting Deputy Director
Torts Branch, Civil Division

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

LARA A. ENGLUND
Assistant Director
Torts Branch, Civil Division

/s/ Lauren Kells
LAUREN KELLS
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel.: (202) 616-4187
Email: Lauren.Kells@usdoj.gov

DATED: May 5, 2022