

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-0365V

GRACE WANG,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 28, 2024

Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for Petitioner.

Katherine Carr Esposito, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 8, 2021, Grace Wang filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). On May 9, 2023, Petitioner filed an amended petition. Petitioner alleges that she suffered a right shoulder injury related to vaccine administration (“SIRVA”) resulting from the adverse effects of a Tetanus diphtheria (“Td”) vaccine received on August 9, 2020. Amended Petition at 1. Petitioner further alleges that she received the vaccine in the United States, she suffered the residual effects of her injury for more than six months, and neither Petitioner nor any other party has ever received compensation in the form of an award or settlement for her vaccine-related injury. Amended Petition at ¶¶ 1, 10, 11. The case was assigned to the Special Processing Unit of the Office of Special Masters.

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).

On May 11, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On August 28, 2024, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$113,957.49, in addition to funds to satisfy a Medicaid lien. Proffer at 2-3. In the Proffer, 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 the following:**

- a) **A lump sum payment of \$113,957.49 (comprised of \$112,000.00 in pain and suffering and \$1,957.49 for out of pocket expenses) in the form of a check payable to Petitioner, and**
- b) **A lump sum payment of \$1,518.93, representing compensation for satisfaction of the State of Wisconsin Medicaid lien, in the form of a check jointly payable to Petitioner and**

**Anthem
Attention: Susan Tanner, Subrogation Analyst Sr.
P.O. Box 659940
San Antonio, TX 78625-9939**

Petitioner agrees to endorse this check to Anthem for satisfaction of the Medicaid lien.

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**

GRACE WANG,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 21-365V
Chief Special Master Corcoran
ECF

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On January 8, 2021, Grace Wang (“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*. She alleges that, as a result of receiving a tetanus diphtheria (“Td”) vaccination on August 9, 2020, she sustained injuries, including a Shoulder Injury Related to Vaccine Administration (“SIRVA”). *See* Petition (ECF No. 1); Amended Petition (ECF No. 30). On April 20, 2023, respondent filed his Vaccine Rule 4(c) report, concluding that petitioner suffered a SIRVA as defined by the Vaccine Injury Table and that she met the other statutory and jurisdictional requirements. ECF No. 27. On May 11, 2023, Chief Special Master Corcoran issued a ruling on entitlement, finding that petitioner was entitled to compensation for a Table SIRVA injury. ECF No. 31.

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 \$112,000.00 in actual pain and suffering.

B. Out of pocket expenses

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$1,957.49 for documented out-of-pocket expenses.

C. Medicaid lien

Based upon the evidence of record, respondent proffers that petitioner should be awarded funds to satisfy the State of Wisconsin Medicaid lien in the amount of \$1,518.93, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Wisconsin may have against any individual as a result of any Medicaid payments the State of Wisconsin 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 August 9, 2020 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 lump sum payments, as described below, and requests that the Chief Special Master's decision and the Court's judgment award the following:²

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.

- a. A lump sum payment of **\$113,957.49** in the form of a check payable to petitioner, and
- b. A lump sum payment of **\$1,518.93**, representing compensation for satisfaction of the State of Wisconsin Medicaid lien, in the form of a check jointly payable to petitioner and Anthem, Attention: Susan Tanner, Subrogation Analyst Sr., P.O. Box 659940, San Antonio, TX 78625-9939. Petitioner agrees to endorse this check to Anthem 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
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

JULIA M. COLLISON
Assistant Director
Torts Branch, Civil Division

s/Katherine C. Esposito
Katherine C. Esposito
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) 305-3774
katherine.esposito@usdoj.gov

Dated: August 28, 2024