

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-735V

ELIZABETH BABO,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Chief Special Master Corcoran

Filed: January 23, 2024

Nicole M. Avitabile, Law Offices of Jeffrey S. Glassman, LLC, Boston, MA, for Petitioner.

Mark K. Hellie, U.S. Dep’t of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 13, 2021, Elizabeth Babo, formerly Elizabeth Moscone (hereinafter “Petitioner”), filed a petition seeking compensation under the National Vaccine Injury Compensation Program (the “Vaccine Program”).² Petitioner alleged that she suffered a shoulder injury related to vaccine administration (“SIRVA”) in her left shoulder as a result of a hepatitis A vaccine she received on May 23, 2019. Petition (ECF No. 1) at 1. It began as a *pro se* matter, but Petitioner obtained counsel in June 2021, and the case was assigned to me a few months later.

The parties engaged in settlement discussions beginning in December 2021, but reached an impasse by March 2022. ECF No. 36. Thereafter, Respondent filed his Rule 4(c) Report contesting entitlement, and on April 7, 2023, I issued a Ruling on Entitlement finding that

¹ Under Vaccine Rule 18(b), each party has fourteen (14) days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the Decision will be available to the public in its present form. *Id.*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended at 42 U.S.C. §§ 300aa-10 through 34 (2012) (“Vaccine Act” or “the Act”). Individual section references hereafter will be to § 300aa of the Act (but will omit that statutory prefix).

Petitioner provided preponderant evidence satisfying all requirements for a Table SIRVA. ECF No. 45.

The parties were not initially successful at resolving damages. However, on January 22, 2024, Respondent filed a proffer proposing an award of compensation. ECF No. 52. I have reviewed the file and based upon that review I conclude that the Respondent's proffer (as attached hereto) is reasonable. The Proffer also represents that Petitioner accepts the proposed sums. I therefore adopt it as my decision in awarding damages on the terms set forth therein.

The proffer awards:

- A lump sum payment of \$86,595.54, representing compensation for pain and suffering (\$80,000.00), lost wages (\$6,262.23), and unreimbursed out-of-pocket medical expenses (\$333.31), in the form of a check payable to Petitioner.

Proffer at II. These amounts represent compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which Petitioner is entitled.

I approve a Vaccine Program award in the requested amount set forth above to be made to Petitioner. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court is directed to enter judgment herewith.³

IT IS SO ORDERED.

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

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by each filing (either jointly or separately) a notice renouncing their right to seek review.

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Case No. 21-735V (ECF)
CHIEF SPECIAL MASTER
CORCORAN

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Procedural History

On January 13, 2021, Elizabeth Babo (“petitioner”) filed a petition for compensation (“Pet.”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“the Vaccine Act” or “the Act”). Petitioner alleges that as a result of a hepatitis A (“Hep A”) vaccine that was administered on May 23, 2019, she suffered a left shoulder injury related to vaccine administration (“SIRVA”). Pet. at 1, ¶¶ 1-3. The parties contested onset, and, on April 7, 2023, the Court issued its Ruling on Entitlement, finding that the onset of petitioner’s SIRVA was within forty-eight hours of vaccination.¹ ECF Doc. No. 45 at 7.

¹ Respondent does not waive his right to seek review of the Court’s Ruling on Entitlement.

II. Items of Compensation and Form of the Award

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$86,595.54. The award is comprised of the following: \$80,000.00 for pain and suffering, \$6,262.23 for lost wages, and \$333.31 for unreimbursed out-of-pocket medical expenses. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a) regarding her May 23, 2019 Hep A vaccination. Petitioner agrees.²

III. Form of the Award

The parties recommend that compensation provided to petitioner should be made through a lump sum payment of \$86,595.54, in the form of a check payable to petitioner. Petitioner agrees.

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

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 medical expenses, future lost earnings, and future pain and suffering.

DARRYL R. WISHARD
Assistant Director
Torts Branch, Civil Division

s/ Mark K. Hellie

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