

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-809V

UNPUBLISHED

MARTHA T. CUNNINGHAM,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 8, 2023

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Tetanus Diphtheria acellular
Pertussis (Tdap) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

John C. Smith, Smith and Smith PLLC, Tucson, AZ, for Petitioner.

Jennifer A. Shah, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 28, 2021, Martha T. Cunningham 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 (SIRVA), resulting from a tetanus diphtheria acellular pertussis (Tdap) vaccination she received on January 30, 2019. Petition at 1.

On November 7, 2022, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On March 8, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$136,764.34, including \$135,000.00 for pain and suffering and \$1,764.34 for out-of-pocket expenses. Proffer at 1. In the Proffer, Respondent represented that Petitioner agrees with the

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

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 \$136,764.34, including \$135,000.00 for pain and suffering and \$1,764.34 for out-of-pocket expenses 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.

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MARTHA T. CUNNINGHAM,

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v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 21-809V
Chief Special Master Corcoran
SPU

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On January 28, 2021, Martha T. Cunningham (“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 (“Vaccine Act” or “Act”). Petitioner alleges that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”) as a result of a tetanus, diphtheria, and acellular pertussis (“Tdap”) vaccination administered on January 30, 2019. Petition at 1.

On October 28, 2022, respondent filed his Vaccine Rule 4(c) report, recommending that compensation be awarded. ECF No. 35. On November 7, 2022, this Court issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 36.

I. Items of Compensation

Respondent proffers that petitioner should be awarded **\$136,764.34**, consisting of \$135,000.00 for pain and suffering and \$1,764.34 for out-of-pocket expenses. This represents all elements of compensation to which petitioner would be 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 following¹: a lump sum payment of **\$136,764.34**, representing compensation for all elements of economic and noneconomic damages, in the form of a check payable to petitioner, Martha T. Cunningham.

III. Summary of Recommended Payment Following Judgment

Lump sum payable to petitioner, Martha T. Cunningham: **\$136,764.34.**

Respectfully submitted,

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

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Deputy Director
Torts Branch, Civil Division

LARA A. ENGLUND
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Torts Branch, Civil Division

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.

s/ Jennifer A. Shah

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Dated: March 8, 2023