

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-1063V

DEBORAH GROSS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 22, 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 ON DAMAGES¹

On March 15, 2021, Deborah Gross 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”) as the result of an influenza (“flu”) vaccine received on November 3, 2020. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 23, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On March 22, 2024, Respondent filed a proffer on award of compensation (“Proffer”). Respondent represented that Petitioner agrees with the

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).

proffered award. *Id.* at 2. 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 a lump sum payment of \$103,979.17 (representing \$102,500.00 for pain and suffering, and \$1,479.17 for past unreimbursable 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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DEBORAH GROSS,

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SECRETARY OF HEALTH AND
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No. 21-1063V
Chief Special Master Corcoran

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On March 15, 2021, Deborah Gross (“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 filed an amended petition on July 14, 2022. She alleges that, as a result of receiving an influenza vaccine on November 3, 2020, she sustained injuries, including Shoulder Injury Related to Vaccine Administration (“SIRVA”). *See* Amended Petition. On October 20, 2023, respondent filed his Vaccine Rule 4(c) report, concluding that petitioner suffered SIRVA as defined by the Vaccine Injury Table, within the Table timeframe, and with no apparent alternative cause. On October 23, 2023, Chief Special Master Corcoran issued a ruling on entitlement, finding that petitioner was entitled to compensation for a SIRVA Table injury.

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded

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

a lump sum of **\$103,979.17**, for all damages (consisting of \$102,500.00 actual pain and suffering, and \$1,479.17 in documented out-of-pocket expenses). This amount represents all elements of compensation to which petitioner is 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 a lump sum payment, as described below, and requests that the Chief Special Master's decision and the Court's judgment award the following: A lump sum payment of **\$103,979.17** in the form of a check payable to petitioner.² Petitioner agrees.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

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

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Torts Branch, Civil Division

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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.

s/Katherine C. Esposito
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Dated: March 22, 2024