

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-1276V

UNPUBLISHED

ISAAH GUY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 2, 2023

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Jerome A. Konkol, Samster, Konkol & Safran, S.C., Wauwatosa, WI, for Petitioner.

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

DECISION AWARDING DAMAGES¹

On April 23, 2021, Isaiah Guy 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 a shoulder injury related to vaccine administration (SIRVA) resulting from an influenza (flu) vaccine he received on October 17, 2019. Petition at 1, 7. Petitioner further alleges that he received the vaccination within the United States, he experienced symptoms in excess of six months, and that he has not received any compensation in the form of an award or settlement, nor has he filed a civil action for his vaccine-related injuries. Petition at 7. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court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 April 12, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On May 1, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$135,000.00. Proffer at 1. 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 a lump sum payment of \$135,000.00 (consisting entirely of compensation for pain and suffering) 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.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

ISAAH GUY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 21-1276V
Chief Special Master Corcoran
SPU

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On April 23, 2021, petitioner Isaiah Guy (“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 he suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”) as a result of an influenza vaccination administered on October 17, 2019. Petition at 7.

On February 8, 2023, respondent filed his Vaccine Rule 4(c) report, recommending that compensation be awarded. ECF No. 28. On April 12, 2023, this Court issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 32.

I. Items of Compensation

Respondent proffers that petitioner should be awarded **\$135,000.00**, consisting entirely of compensation for pain and suffering. 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 **\$135,000.00**, representing compensation for all elements of economic and noneconomic damages, in the form of a check payable to petitioner, Isaiah Guy.

III. Summary of Recommended Payment Following Judgment

Lump sum payable to petitioner, Isaiah Guy: **\$135,000.00.**

Respectfully submitted,

BRIAN BOYNTON
Principal Deputy Assistant Attorney General

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

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

TRACI R. PATTON
Assistant Director
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

Jennifer A. Shah
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) 305-2181
Jennifer.shah@usdoj.gov

Dated: May 1, 2023