

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-2137V

ANGELINA M. LOMBARDO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: June 28, 2023

Matthew F. Belanger, Faraci Lange LLP, Rochester, NY, for Petitioner.

Nina Ren, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On November 5, 2021, Angelina M. Lombardo 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 developed an infected inflammatory granulomatous lesion, abscess, and scar as a result of a tetanus-diphtheria-acellular pertussis vaccine she received on April 16, 2019. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 9, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her injury. On June 27, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded (A) a lump sum payment of \$45,000.00 for pain and suffering and (B) \$1,820.23, which amount represents compensation for satisfaction of the State of New York Medicaid Lien. Proffer at 1-2. In

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).

the Proffer, Respondent represented that Petitioner agrees with the 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 Petitioner the following compensation:**

- 1. A lump sum payment of \$45,000.00 in the form of a check payable to Petitioner; and**
- 2. A lump sum payment of \$1,820.23, representing compensation for satisfaction of the State of New York Medicaid lien, in the form of a check payable jointly to Petitioner and:**

New York State Department of Health
P.O. Box 415874
Boston, MA 02241-5874
Recovery Case: 258770

Petitioner agrees to endorse the check to the New York State Department of Health 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**

ANGELINA M. LOMBARDO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 21-2137V
Chief Special Master Corcoran
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On November 5, 2021, petitioner, Angelina Lombardo, filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act”), alleging that she developed an infected inflammatory granulomatous lesion, abscess, and scar as a result of tetanus-diphtheria-acellular pertussis vaccine she received in her left deltoid on April 16, 2019. Petition at 1.

On April 26, 2023, respondent, the Secretary of Health and Human Services, filed a Rule 4(c) Report, indicating that this case is appropriate for compensation under the terms of the Vaccine Act, and on May 9, 2023, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF Nos. 31, 32.

I. Items of Compensation

a. Pain and Suffering

Based on the record evidence, respondent proffers that petitioner should be awarded a lump sum of **\$45,000.00** for pain and suffering, in the form of a check payable to petitioner. Petitioner agrees.

b. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the State of New York Medicaid lien in the amount of **\$1,820.23**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of New York may have against any individual as a result of any Medicaid payments the State of New York 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 on April 16, 2019, under Title XIX of the Social Security Act.

This amount represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

The parties recommend that compensation provided to petitioner should be made through two lump sum payments described below, and request that the Chief Special Master's decision and the Court's judgment award the following:¹

- A. A lump sum payment of **\$45,000.00** in the form of a check payable to petitioner; and
- B. A lump sum payment of **\$1,820.23**, representing compensation for satisfaction of the State of New York Medicaid lien, in the form of a check payable jointly to petitioner and:

New York State Department of Health
P.O. Box 415874
Boston, MA 02241-5874
Recovery Case: 258770

Petitioner agrees to endorse the check to the New York State Department of Health for satisfaction of the Medicaid lien.

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

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

TRACI R. PATTON
Assistant Director
Torts Branch, Civil Division

/s/ NINA Y. REN
NINA Y. REN
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington D.C. 20044-0146
(202) 451-7499
Nina.Ren@usdoj.gov

DATED: June 27, 2023