

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-0778V

ANDREW EBERLING,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 8, 2024

Adam Marc Raditz, I, Ginsberg & O'Connor, P.C., Cherry Hill, NJ, for Petitioner.

Julianna Rose Kober, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On July 18, 2022, Andrew Eberling 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 syncopal episode upon receiving a human papillomavirus (“HPV”) vaccine on August 2, 2019, which resulted in injuries, including a “closed nasal fracture and deviated septum with 85% obstruction” and lacerations to his face. Petition at 1-2. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On September 10, 2024, a ruling on entitlement was issued, finding Petitioner entitled to compensation. On October 4, 2024, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$10,000.00, in pain and suffering. Proffer at 2. 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.

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).

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$10,000.00, 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**

ANDREW EBERLING,

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SECRETARY OF HEALTH AND
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No. 22-778V

Chief Special Master Corcoran
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On July 18, 2022, Andrew Eberling (“petitioner”) filed a Petition for Compensation (“petition”) under the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act” or “the Act”). 42 U.S.C. §§ 300aa-1 to -34. Petitioner alleges that he suffered a syncopal episode, as defined in the Vaccine Injury Table, 42 C.F.R. § 100.3, upon receiving a human papillomavirus (“HPV”) vaccine on August 2, 2019, which resulted in injuries including a “closed nasal fracture and deviated septum with 85% obstruction,” and lacerations to his face. *See* Petition at 2.

On September 10, 2024, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for a vasovagal syncope Table injury, and on September 10, 2024, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 28; ECF No. 29.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$10,000.00 in pain and suffering.

See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

This 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

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 \$10,000.00, in the form of a check payable to petitioner.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Andrew Eberling: **\$10,000.00**

CONCLUSION

Respondent recommends that the court award \$10,000.00 for all damages available under Section 15(a) of the Vaccine Act. This amount does not include reasonable attorneys' fees and litigation costs, which will be determined at a later date.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

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

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/s/ Julianna R. Kober by Katherine Edwards

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Date: October 4, 2024