

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 23-0007V

DIANE KUDALIS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 30, 2024

Heather Varney Menezes, Shaheen & Gordon, P.A., Manchester, NH, for Petitioner.

Katherine Carr Esposito, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 5, 2023, Diane Kudalis 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 left shoulder injury related to vaccine administration (“SIRVA”), a defined Table injury lasting more than six months, after receiving an influenza (“flu”) vaccine on September 28, 2020. Petition at 1, ¶¶ 3, 22. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 9, 2024, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her SIRVA. On January 30, 2024, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$70,908.69, representing compensation in the amounts of \$70,000.00 for pain and suffering and \$908.69 for past out-of-pocket expenses. Proffer at 1-2. In the Proffer, Respondent

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).

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 \$70,908.69, representing compensation in the amounts of \$70,000.00 for pain and suffering and \$908.69 for actual 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.

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

DIANE KUDALIS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 23-7V
Chief Special Master Corcoran
ECF

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On January 4, 2023, Diane Kudalis (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. Petitioner alleges that she received an influenza vaccination on September 28, 2020, and thereafter suffered from a left shoulder injury related to vaccine administration (“SIRVA”). *See* Petition at 1-2. The Secretary of Health and Human Services (“respondent”) conceded entitlement in his Rule 4(c) Report on January 9, 2024. ECF No. 18. The Chief Special Master issued a Ruling on Entitlement the same day and found that petitioner was entitled to compensation for a SIRVA Table injury. ECF No. 19. Pursuant to the Court’s Damages Order, also issued on January 9, 2024 (ECF No. 20), the parties submit the following proffer.

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

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded **\$70,000.00** for pain and suffering and **\$908.69** for documented past out-of-pocket expenses.

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

III. 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 following: a lump sum payment of **\$70,908.69** in the form of a check payable to petitioner.² Petitioner agrees.

Respectfully submitted,

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Director
Torts Branch, Civil Division

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Deputy Director
Torts Branch, Civil Division

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Assistant Director
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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: January 30, 2024