

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 23-287V

SPENCER THORNTON,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 5, 2024

Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for Petitioner.

Camille Jordan Webster, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On February 27, 2023, Spencer Thornton 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”) as a result of a human papillomavirus (“HPV”) vaccine administered to him on June 25, 2021. Pet. at 1, ECF No. 1. Petitioner further alleges that the vaccine was received in the United States, he suffered sequela of his injury for more than six months, and neither Petitioner nor any other party has ever received compensation in the form of an award or settlement for his vaccine-related injury. *Id.* at 1, 10. The case was assigned to the Special Processing Unit of the Office of Special Masters.

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).

On December 18, 2023, a Ruling on Entitlement was issued, finding Petitioner entitled to compensation for his SIRVA. ECF No. 21. On March 5, 2024, Respondent filed a Proffer on award of compensation ("Proffer") indicating Petitioner should be awarded \$130,000.00 in pain and suffering, \$1,376.75 in past unreimbursable expenses, and \$10,324.01 in satisfaction of a Medi-Cal lien. Proffer at 1-2, ECF No. 26. 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 two lump sum payments as described below:**

- a. **A lump sum payment of \$131,376.75 for pain and suffering and past unreimbursable expenses, in the form of a check payable to Petitioner; and**
- b. **A lump sum payment of \$10,324.01, representing compensation for satisfaction of the Medi-Cal lien, in the form of a check payable jointly to Petitioner and:**

**Department of Health Care Services
Re: DHCS Account No. C98774651E-VAC
Recovery Branch – MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421**

Petitioner has agreed to endorse and mail this payment to Department of Health Care Services.

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**

SPENCER THORNTON,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 23-287V

ECF

Chief Special Master Brian H. Corcoran

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On February 27, 2023, Spencer Thornton (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, as amended (the “Vaccine Act”), 42 U.S.C. §§ 300aa-1 to -34. Petitioner alleges that he received a Human papillomavirus (“HPV”) vaccination on June 25, 2021, and thereafter suffered from a right shoulder injury related to vaccine administration (“SIRVA”). Petition at 1.

On December 18, 2023, 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 SIRVA Table injury, and on that same day, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 20; ECF No. 21.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$130,000.00 in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that he incurred past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$1,376.75. *See* 42 U.S.C. § 300aa-15(a)(1)(B).

Petitioner agrees.

C. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the Medi-Cal lien in the amount of \$10,324.01, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action Medi-Cal may have against any individual as a result of any Medicaid payment Medi-Cal has made to or on behalf of petitioner from the date of his eligibility for benefits through the date of judgment in this case as a result of his alleged vaccine-related injury suffered on or about June 25, 2021, under Title XIX of the Social Security Act.

These amounts represent 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 two lump sum payments as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹:

- A. A lump sum payment of **\$131,376.75**, in the form of a check payable to petitioner; and

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.

- B. A lump sum payment of **\$10,324.01**, representing compensation for satisfaction of the Medi-Cal lien, in the form of a check payable jointly to petitioner and:

Department of Health Care Services
Re: DHCS Account No. C98774651E-VAC
Recovery Branch – MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421

Petitioner agrees to endorse and mail this payment to Department of Health Care Services.

III. Summary of Recommended Payment Following Judgment

- A. Lump sum payable to petitioner, Spencer Thornton: **\$131,376.75**
- B. Medicaid lien: **\$10,324.01**

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

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Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

TRACI R. PATTON
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/s/CAMILLE J. WEBSTER
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Dated: March 5, 2024