

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 23-0421V

CARA FOWLER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 19, 2024

Leigh Finfer, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Joseph Douglas Leavitt, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON DAMAGES¹

On March 27, 2023, Cara Fowler 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 alleged that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as the result of an influenza (“flu”) vaccine received on October 7, 2020. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 18, 2024, a Ruling on Entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On August 19, 2024, Respondent filed a Proffer on award of compensation (“Proffer”). Respondent represented that Petitioner agrees with the proffered award. *Id.* at 1 – 2. 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 Proffer, I award the following compensation:

- A. A lump sum of \$105,000.00 (for pain and suffering) in the form of a check payable to Petitioner.**
- B. A lump sum of \$291.37, representing compensation for the satisfaction of the Ohio Department of Medicaid lien, in the form of a check payable jointly to Petitioner and:**

**Ohio Tort Recovery Unit
5475 Rings Road, Suite 125
Dublin, OH 43017
Case No.: 1261849**

Petitioner agrees to endorse the check to the above payee for satisfaction of the Medicaid lien.

Proffer at 2 - 3. These amounts compensation for all damages that would be available under Section 15(a). *Id.*

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**

CARA FOWLER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 23-421V (ECF)
Chief Special Master Corcoran

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On March 27, 2023, Cara Fowler (“petitioner”) filed a petition for compensation 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, alleging that she suffered a right-sided shoulder injury related to vaccine administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza (“flu”) vaccination that she received on October 7, 2020. ECF No. 1 at 1. On March 18, 2024, respondent filed a Rule 4(c) Report, recommending that compensation be awarded. ECF No. 18. That same day, Chief Special Master Corcoran issued a Ruling on Entitlement, agreeing with respondent that petitioner is entitled to compensation. ECF No. 19.

I. Items of Compensation

a. Pain and Suffering

Respondent proffers that petitioner should be awarded **\$105,000.00** in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

b. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the Ohio Department of Medicaid Lien in the amount of **\$291.37**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action that the Ohio Department of Medicaid may have against any individual as a result of any payments the Ohio Department of Medicaid 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 vaccine-related injury suffered on or about October 7, 2020, 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 one lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following:¹

- a. A lump sum payment of **\$105,000.00**, in the form of a check payable to petitioner; and
- b. A lump sum payment of **\$291.37**, representing compensation for the satisfaction of the Ohio Department of Medicaid lien, in the form of a check payable jointly to petitioner and:

Ohio Tort Recovery Unit
5475 Rings Road Suite 125
Dublin, OH 43017
Case No.: 1261849

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.

Petitioner agrees to endorse the check to the above payee for satisfaction of the Medicaid lien.

Respectfully submitted,

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Principal Deputy Assistant Attorney General

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Director
Torts Branch, Civil Division

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/s/ Joseph Leavitt
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Dated: August 19, 2024