

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 23-1778V

LISA KENNEDY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 8, 2025

Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Mark Kim Hellie, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON DAMAGES¹

On October 11, 2023, Lisa Kennedy 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 shoulder injury related to vaccine administration (“SIRVA”) as the result of an influenza (“flu”) vaccination received on December 4, 2022. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 24, 2024, a Ruling on Entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On January 7, 2025, Respondent filed a Proffer on award of compensation (“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.

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, **Petitioner is awarded a lump sum of \$175,204.92 (representing \$170,000.00 for pain and suffering, and \$5,204.92 for past unreimbursable expenses), to be paid through an ACH deposit to Petitioner's counsel's IOLTA account for prompt disbursement.** This amount represents 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.

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Case No. 23-1778V (ECF)
CHIEF SPECIAL MASTER
CORCORAN

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Procedural History

On October 11, 2023, Lisa Kennedy (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered a left shoulder injury related vaccine administration (“SIRVA”) as the result of an influenza (“flu”) vaccination received on December 4, 2022. Pet. at 1.

On July 18, 2024, respondent filed his Rule 4(c) Report, conceding entitlement in this case because petitioner met the criteria to establish a presumptive Table SIRVA injury. ECF Doc. No. 26 at 1, 7-8. On July 24, 2024, the Court issued its Ruling on Entitlement, finding that petitioner was entitled to compensation. ECF Doc. No. 27.

II. Items of Compensation and Form of the Award

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$175,204.92. The award is comprised of the following: \$170,000 for pain and suffering, and \$5,204.92 for unreimbursed out-of-pocket medical expenses. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a) regarding her December 4, 2022 flu vaccination. Petitioner agrees.¹

III. Form of the Award

The parties recommend that compensation provided to petitioner should be made through a lump sum payment of \$175,204.92, in the form of a check payable to petitioner. Petitioner agrees.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Principal Deputy Assistant Attorney General

C. SALVATORE D’ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

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 lost earnings, and future pain and suffering.

LARA A. ENGLUND
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s/ Mark K. Hellie

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DATED: January 7, 2025