

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-910V

Filed: February 18, 2015

Unpublished

PHILIP ALTIERI,

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Petitioner,

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v.

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Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder Injury
Related to Vaccine Administration
(SIRVA); Special Processing Unit;
Attorneys' Fees and Costs Decision
Based on Proffer

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

*

Respondent.

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Paul Brazil, Esq., Muller Brazil LLP, Philadelphia, PA for petitioner.

Justine Walters, Esq., US Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES AND ATTORNEYS' FEES AND COSTS¹

Vowell, Chief Special Master:

On September 26, 2014, Philip Altieri filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² [the "Vaccine Act" or "Program"]. Petitioner alleges that he suffered right shoulder injuries which were caused by the influenza vaccine he received on December 2, 2013. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On February 3, 2015, respondent filed her Rule 4(c) report in which she conceded that petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1-2. Specifically, respondent "concluded that a preponderance of the evidence establishes that petitioner's injury is consistent with a shoulder injury related to vaccine administration ("SIRVA"), and that petitioner's injury [was] not due to factors

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). 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 "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

unrelated to his December 2, 2013, flu vaccination.” *Id.* at 3. Respondent further agreed that petitioner’s injury lasted for more than six months.

On February 3, 2014, I issued a ruling on entitlement, finding petitioner entitled to compensation. On February 18, 2015, respondent filed a proffer on award of compensation [“Proffer”] detailing compensation in the amount of \$70,000.00 for actual and projected pain and suffering and in the amount of \$728.09 for past unreimbursed expenses for a total of \$70,728.09. Proffer at 2. Respondent averred that petitioner agreed to the amounts set forth therein. *Id.* This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

The proffer also included an award of attorneys’ fees and costs in the amount of \$14,562.94 to which petitioner agreed. Proffer at 2. In accordance with General Order #9, petitioner’s counsel asserts that petitioner incurred no out-of-pocket expenses. *Id.*

The Vaccine Act permits an award of reasonable fees and costs. 42 U.S.C. § 300aa-15(e). I find the proposed total amount of \$14,562.94 to be reasonable.

Pursuant to the terms stated in the attached Proffer, **I award petitioner a payment of \$85,291.03 as follows:**

- a. a lump sum payment of **\$70,728.09** in the form of a check payable solely to petitioner, Philip Altieri;
- b. a lump sum payment of **\$14,562.94** in the form of a check payable jointly to petitioner, Philip Altieri and petitioner’s counsel, Paul Brazil.

The clerk of the court is directed to enter judgment in accordance with this decision.³

s/Denise K. Vowell
Denise K. Vowell
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

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

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|-------------------------|---|-----------------------------|
| PHILIP ALTIERI, |) | |
| |) | |
| |) | |
| Petitioner, |) | |
| |) | No. 14-910V |
| v. |) | Chief Special Master Vowell |
| |) | ECF |
| SECRETARY OF HEALTH AND |) | |
| HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |
| |) | |

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

For the purposes of this proffer, the term “vaccine-related” is as described in Respondent’s Rule 4(c) Report filed on February 3, 2015.

A. Future Unreimbursable Expenses

The parties agree that based upon the evidence of record, petitioner will not require future care for his vaccine-related injury. Therefore, respondent proffers that petitioner should be awarded no future unreimbursable expenses under 42 U.S.C. § 300aa-15(a)(1).

Petitioner agrees.

B. Lost Future Earnings

The parties agree that based upon the evidence of record, petitioner has been employed and will continue to be gainfully employed in the future. Therefore, respondent proffers that petitioner should be awarded no anticipated loss of earnings under 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

C. Pain and Suffering

Respondent proffers that petitioner should be awarded \$70,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

D. Past Unreimbursable Expenses

Evidence supplied by petitioner documents his expenditure of past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$728.09. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no outstanding Medicaid liens against him.

F. Attorneys' Fees and Costs

Petitioner has supplied documentation of reasonable attorneys' fees and litigation costs in the amount of \$14,562.94, incurred in pursuit of this petition. In compliance with General Order #9, petitioner has indicated that he did not incur any out-of-pocket expenses in proceeding on the petition. Respondent proffers that petitioner should be awarded \$14,562.94 for attorneys' fees and costs. Petitioner agrees.

II. Form of the Award

The parties recommend that compensation provided to petitioner should be made through lump sum payments as described below and request that the Chief Special Master's decision and the Court's judgment award the following:¹

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 and future pain and suffering.

- A. A lump sum payment of \$70,000.00, representing compensation for pain and suffering, in the form of a check payable to petitioner;
- B. A lump sum payment of \$728.09, representing compensation for past unreimbursable expenses, in the form of a check payable to petitioner; and
- C. A lump sum payment of \$14,562.94, in the form of a check payable to petitioner and petitioner's attorney, Paul Brazil, Esq., for attorney's fees and costs. Petitioner agrees to endorse this payment to petitioner's attorney.

III. Summary of Recommended Payments Following Judgment

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|----|---------------------------------------|--------------------|
| A. | Lump sum paid to petitioner: | \$70,728.09 |
| B. | Reasonable Attorneys' Fees and Costs: | \$14,562.94 |

Respectfully submitted,

JOYCE R. BRANDA
Acting Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Deputy Director
Tort Branch, Civil Division

LYNN E. RICCIARDELLA
Senior Trial Attorney
Torts Branch, Civil Division

s/ Justine Walters
JUSTINE WALTERS
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Telephone: (202) 307-6393

Dated: February 18, 2015