

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-983V

Filed: January 27, 2015

VIRGINIA SHIVES,

Petitioner,

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Damages Decision Based on Proffer;
Influenza Vaccine or Flu Vaccine;
Shoulder Injury Related to Vaccine
Administration; SIRVA,
Special Processing Unit

Andrew Downing, Van Cott & Talamante, PLLC, Phoenix, AZ, for petitioner.
Claudia Gangi, US Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Vowell, Chief Special Master:

On October 14, 2014, Virginia Shives 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 she suffered left shoulder and arm pain caused-in-fact by the influenza vaccine she received on September 20, 2013. Petition at 1-2, 7. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 9, 2014, I issued a ruling on entitlement, finding petitioner entitled to compensation. On January 27, 2015, respondent filed a proffer on award of compensation [“Proffer”] indicating petitioner should be awarded \$85,000.00 “for actual and projected pain and suffering.” Proffer at 2. According to respondent’s Proffer, petitioner agrees to this proposed amount. *Id.* at 1-2.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post it on the United States Court of Federal Claims' website, in accordance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).

Pursuant to the terms stated in the attached Proffer, **I award petitioner a lump sum payment of \$85,000.00 in the form of a check payable to petitioner, Virginia Shives.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

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**

VIRGINIA SHIVES,)	
)	
Petitioner,)	
)	
v.)	No. 14-983V
)	Chief Special Master Vowell
SECRETARY OF HEALTH AND)	ECF
HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On October 14, 2014, Virginia Shives (“petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34. Petitioner alleges that she received an influenza vaccine in her left arm on September 20, 2013, and subsequently suffered a left shoulder injury secondary to the vaccination. Petition at 1-2. On December 9, 2014, the Secretary of Health and Human Services (“respondent”) filed a Vaccine Rule 4(c) Report, conceding that petitioner suffered from a shoulder injury related to vaccine administration (“SIRVA”), and recommending that the Court award petitioner compensation. Respondent’s Rule 4(c) Report at 3. Respondent hereby submits the following proffer regarding the award of compensation.

I. Items of Compensation

A. Future Medical Care Expenses

Respondent proffers that based on the evidence of record, petitioner is not entitled to an award for projected unreimbursable medical care expenses incurred from the date of judgment as provided under 42 U.S.C. § 300aa-15(a)(1)(A). Petitioner agrees.

B. Lost Earnings

Respondent proffers that based upon the evidence of record, petitioner has not and is not likely to suffer a loss of earnings as a result of her vaccine-related injury. Accordingly, the Court should not award lost future earnings as provided under § 300aa-15(a)(3)(A). Petitioner agrees.

C. Pain and Suffering

Respondent proffers that the Court should award petitioner a lump sum of \$85,000.00 for her 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 § 300aa-15(a)(4). Petitioner agrees.

D. Past Unreimbursable Expenses

Respondent proffers that based upon the evidence of record, petitioner has not incurred any past unreimbursable expenses related to her vaccine-related injury. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no outstanding Medicaid liens related to her vaccine-related injury.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment as described below and request that the Special Master's decision and the Court's judgment award the following¹: a lump sum payment of \$85,000.00 (representing compensation for actual and projected pain and suffering), in the form of a check payable to petitioner.

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 pain and suffering.

III. Summary of Recommended Payment Following Judgment

A lump sum payment of \$85,000.00, representing compensation for actual and projected pain and suffering related to the vaccine-related injury, payable to petitioner.

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

LINDA S. RENZI
Senior Trial Counsel
Torts Branch, Civil Division

/s/ Claudia B. Gangi
CLAUDIA B. GANGI
Senior Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel.: (202) 616-4138

Dated: January 27, 2015