

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1042V

Filed: June 21, 2016

UNPUBLISHED

\*\*\*\*\*

SALLY LESSNER,

\*

\*

Petitioner,

\*

v.

\*

Damages Decision Based on Proffer; Influenza Vaccination; Shoulder Injury Related to Vaccine Administration ("SIRVA"); Special Processing Unit ("SPU")

SECRETARY OF HEALTH AND HUMAN SERVICES,

\*

\*

Respondent.

\*

\*

\*\*\*\*\*

Andrew Downing, Van Cott & Talamante, PLLC, Phoenix, AZ, for petitioner.

Michael Milmo, U.S. Department of Justice, Washington, DC, for respondent.

**DECISION AWARDING DAMAGES**<sup>1</sup>

Dorsey, Chief Special Master:

On September 17, 2015, Sally Lessner ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq.,<sup>2</sup> (the "Vaccine Act" or "Program"). Petitioner alleges that she suffered pain, weakness, and stiffness in her arm and shoulder caused-in-fact by the influenza vaccination she received on September 26, 2012. Petition at ¶¶ 3, 10-11. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 25, 2016, a ruling on entitlement was issued, finding petitioner entitled to compensation for shoulder injury. On June 20, 2016, respondent filed a proffer on award of compensation ("Proffer") indicating petitioner should be awarded \$244,827.26 for lost wages, \$100,000.00 for pain and suffering, and \$5,116.71 for past unreimbursable expenses for a total award of \$349,943.97. Proffer at 1. In the Proffer,

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). 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, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>2</sup> 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 (2012).

respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$349,943.97 (representing \$244,827.26 for lost wages, \$100,000.00 for pain and suffering, and \$5,116.71 for past unreimbursable expenses) in the form of a check payable to petitioner, Sally Lessner.** 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.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

---

<sup>3</sup> 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**

SALLY LESSNER,	)	
	)	
Petitioner,	)	No. 15-1042V
	)	Chief Special Master Dorsey
v.	)	ECF
	)	
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

**I. Compensation for Vaccine Injury-Related Items**

On March 25, 2016, the Chief Special Master issued a Ruling on Entitlement determining that petitioner was entitled to vaccine compensation for her Shoulder Injury Related to Vaccine Administration (“SIRVA”). Respondent proffers that, based on the evidence of record, petitioner should be awarded a lump sum of \$349,943.97. This amount consists of \$244,827.26 for lost wages, \$100,000.00 for pain and suffering, and \$5,116.71 for past unreimbursable expenses. In sum, this amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below, and requests that the Chief Special Master’s decision and the Court’s judgment award the following:<sup>1</sup>

---

<sup>1</sup> Should petitioner die prior to entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

- A. A lump sum payment of \$349,943.97 in the form of a check payable to petitioner, Sally Lessner. This amount accounts for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

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

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA  
Director  
Torts Branch, Civil Division

CATHARINE E. REEVES  
Acting Deputy Director  
Torts Branch, Civil Division

GLENN A. MACLEOD  
Senior Trial Counsel  
Torts Branch, Civil Division

*/s/ Michael P. Milmo*  
MICHAEL P. MILMOE  
Senior Trial Counsel  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Phone: (202) 616-4125  
Fax: (202) 616-4310

Dated: June 20, 2016