

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1094V

Filed: December 16, 2015

Unpublished

BETHANY ZELLMER-CESNIK,

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Petitioner,

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Ruling on Entitlement; Concession;

Influenza;

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Shoulder Injury ("SIRVA");

SECRETARY OF HEALTH

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Special Processing Unit ("SPU")

AND HUMAN SERVICES,

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Respondent.

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Paul Brazil, Muller Brazil, LLP, Dresher, PA, for petitioner.

Douglas Ross, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On September 29, 2015, Petitioner 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 a shoulder injury following receipt of her September 23, 2014 influenza vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 15, 2015, respondent filed her Rule 4(c) report in which she concedes that petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, respondent "has concluded that petitioner suffered a non-Table injury of SIRVA [Shoulder Injury Related to Vaccine Administration] and that the preponderance of the medical evidence indicates that the injury was causally related to the flu vaccination she received on September 23, 2014. *Id.* at 4. Respondent further agrees that no other cause for petitioner's SIRVA has been identified, that petitioner has

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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, 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, the undersigned agrees that the identified material fits within this definition, the undersigned 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 (2012).

suffered her condition for more than six months, and that petitioner has met all the legal prerequisites for compensation under the Vaccine Act. *Id.*

In view of respondent's concession and the evidence before me, the undersigned finds that petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master