

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1320V

Filed: August 2, 2016

UNPUBLISHED

ESMERALDA MORALES,

*

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Petitioner,

*

v.

*

Damages Decision Based on Proffer;

Influenza ("Flu") Vaccine;

Shoulder Injury Related to Vaccine

SECRETARY OF HEALTH

*

Administration ("SIRVA");

AND HUMAN SERVICES,

*

Special Processing Unit ("SPU")

*

Respondent.

*

*

Diana Sedar, Maglio, Christopher and Toale, PA (FL), Sarasota, FL, for petitioner.

Camille Collett, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On November 4, 2015, Esmeralda Morales ("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 caused in fact by the influenza vaccination she received on March 19, 2014. Petition, at ¶¶ 1, 9. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On February 3, 2016, the undersigned issued a ruling on entitlement, finding petitioner entitled to compensation for her shoulder injury. On August 2, 2016, respondent filed a proffer on award of compensation ("Proffer") indicating petitioner should be awarded **\$76,451.58**, representing all elements of compensation to which petitioner would be entitled. Proffer at 1. In the Proffer, respondent represented that

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

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).

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 payment as follows:**

- 1. A lump sum payment of \$76,000.00, the form of a check payable to petitioner; and**
- 2. A lump sum of \$451.58, which amount represents reimbursement of a Medicaid lien, in the form of a check payable jointly to petitioner and**

**Agency for Health Care Administration
c/o Florida Medicaid Casualty Recovery Program
P.O. Box 12188
Tallahassee, FL 32317-2188**

Petitioner agrees to endorse this check to the Florida Medicaid Casualty Recovery Program.

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

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
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.

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

ESMERALDA MORALES,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 15-1320V

Chief Special Master Nora Beth Dorsey
ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items

For purposes of this Proffer, the term “vaccine-related” is described in Respondent’s Rule 4(c) Report, filed on February 2, 2016, conceding entitlement in this case. Respondent proffers that, based on the evidence of record, petitioner should be awarded \$76,451.58. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a)(1); 15(a)(3)(A); and 15(a)(4). Petitioner agrees.

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 following:¹

A. A lump sum of \$76,000.00 in the form of a check payable to petitioner;
and

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 pain and suffering, and future lost wages.

B. A lump sum of \$451.58, which amount represents reimbursement of a Medicaid lien, in the form of a check payable jointly to petitioner and

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Tallahassee, FL 32317-2188

Petitioner agrees to endorse this check to the Florida Medicaid Casualty Recovery Program.

Payments made pursuant to paragraphs IIA and IIB represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). 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

MICHAEL P. MILMOE
Senior Trial Counsel
Torts Branch, Civil Division

s/Camille M. Collett
CAMILLE M. COLLETT
Trial Counsel
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Telephone: (202) 616-4098

Dated: August 2, 2016