

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1379V

Filed: April 27, 2016

UNPUBLISHED

BARBARA J. SMITH,

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Petitioner,

*

*

v.

*

SECRETARY OF HEALTH

*

AND HUMAN SERVICES,

*

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Damages Decision Based on Proffer;
Tetanus-Diphtheria-Acellular-Pertussis
Vaccine ("TDaP"); Shoulder Injury
Related to Vaccine Administration
("SIRVA"); Special Processing Unit
("SPU")

Respondent.

*

*

Laurie C. TeWinkle, Law Offices of L.C. TeWinkle, LLC, Erie, PA, for petitioner.

Gordon Elliot Shemin, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On November 16, 2015, Barbara J. Smith ("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"). Petitioner alleges that she suffered a shoulder injury as a result of a tetanus-diphtheria-acellular pertussis ("TDaP") vaccine she received on October 10, 2014. Petition at 1-2. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 25, 2016, a ruling on entitlement was issued, finding petitioner entitled to compensation. On April 27, 2016, respondent filed a proffer on award of compensation ("Proffer") stating that petitioner should be awarded \$85,000.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. Based

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

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 \$85,000.00, in the form of a check payable to petitioner, Barbara J. Smith.** 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

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**

BARBARA J. SMITH,)	
)	
)	
Petitioner,)	No. 15-1379V
)	Chief Special Master Dorsey
v.)	ECF
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

For purposes of this proffer, the term “vaccine-related” is as described in Respondent’s Rule 4(c) Report, filed on April 25, 2016, conceding entitlement in this case. Based upon the evidence of record, respondent proffers that petitioner should be awarded \$85,000.00, which represents all elements of competition to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a) for her vaccine-related injury. Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$85,000.00 in the form of a check payable to petitioner.¹ Petitioner agrees.

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

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.

Respectfully submitted,

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Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

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/s/ Gordon Shemin
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Dated: April 27, 2016.