

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 15-1426V

Filed: October 27, 2016

UNPUBLISHED

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MARCELLA BENNETT,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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

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*Robert Bates, III, Law Offices of Tony Seaton, PLLC, Johnson City, TN, for petitioner.  
Glenn MacLeod, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On November 24, 2015, Marcella Bennett ("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 alleged that she suffered "injuries, including left shoulder injuries, rotator cuff impingement and partial tear of the anterior supraspinatus tendon, resulting from adverse effects of a [sic] influenza vaccination received on December 5, 2012." Petition at 1; *accord.* Petition at ¶¶ 1-5, 8. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 4, 2016, the undersigned issued a ruling on entitlement, finding petitioner entitled to compensation. (ECF No. 29). On October 27, 2016, respondent

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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

filed a proffer on award of compensation ("Proffer") indicating petitioner should be awarded \$125,000.00. Proffer at 1. In the Proffer, 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 \$125,000.00 in the form of a check payable to petitioner, Marcella Bennett.** 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

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<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.

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**No. 15-1426V (ECF)  
CHIEF SPECIAL MASTER  
NORA BETH DORSEY**

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

On April 4, 2016, the Chief Special Master found that a preponderance of the medical evidence indicates that petitioner suffered a left shoulder injury related to vaccine administration (“SIRVA”), which was causally related to the influenza (“flu”) vaccination she received on December 5, 2012. The parties now address the amount of compensation to be awarded in this case.

**I. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$125,000.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>1</sup> Petitioner agrees.

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<sup>1</sup> 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 and future pain and suffering.

**II. Form of the Award**

Petitioner is a competent adult. Accordingly, the parties recommend that the compensation provided to petitioner should be made through a lump sum payment of \$125,000.00 in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

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DATE: October 27, 2016