

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-97V

Filed: June 20, 2016

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JACKIE EVANS,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

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UNPUBLISHED

Special Master Hamilton-Fieldman

Decision on Proffer; Influenza  
("Flu") Vaccine; Shoulder Injury  
Related to Vaccine Administration  
("SIRVA").

Jeffrey S. Pop, Jeffrey S. Pop, Attorney at Law, Beverly Hills, CA, for Petitioner.

Douglas Ross, United States Department of Justice, Washington, D.C., for Respondent.

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

On January 19, 2016, Jackie Evans ("Petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program ("the Program").<sup>2</sup> Petitioner alleged that an influenza ("flu") vaccination administered on September 28, 2013<sup>3</sup> caused her to suffer from a shoulder injury related to vaccine administration ("SIRVA"). On April 18, 2016, the undersigned ruled that Petitioner is entitled to compensation for her injury.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this decision on the United States Court of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 (2012)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Otherwise, "the entire" decision will be available to the public. *Id.*

<sup>2</sup> The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

<sup>3</sup> The attached Proffer identifies the date of vaccination as September 18, 2013. However, the petition, Respondent's Rule 4(c) Report, and the entitlement ruling identify the date of vaccination as September 28, 2013.

On June 17, 2016, Respondent filed a Proffer on Award of Compensation (“Proffer”), attached hereto as Appendix A. In the Proffer, Respondent represents that Petitioner agrees with the proffered award. The undersigned finds the Proffer reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Proffer, the undersigned awards the following:

A lump sum payment of **\$2,647.30**, in the form of a check jointly payable to Petitioner and to

Illinois Department of Healthcare and Family Services  
Bureau of Collections  
Technical Recovery System  
PO Box 19174  
Springfield, Illinois 62794-9174  
Case No. 03-108-0000007716

Petitioner agrees to endorse the payment to the appropriate state agency;  
and

A lump sum payment of **\$55,000.00**, in the form of a check payable solely to Petitioner.

Proffer Section II.

The undersigned approves the requested amount for Petitioner’s compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>4</sup>

**IT IS SO ORDERED.**

s/Lisa D. Hamilton-Fieldman  
Lisa D. Hamilton-Fieldman  
Special Master

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<sup>4</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is 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**

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| *****<br><b>JACKIE EVANS,</b><br><br>Petitioner,<br><br>v.<br><br><b>SECRETARY OF HEALTH<br/>AND HUMAN SERVICES,</b><br><br>Respondent.<br>***** | *<br>*<br>*<br>*<br>*<br>*<br>*<br>*<br>*<br>*<br>* | <b>No. 16-97V (ECF)</b><br>SPECIAL MASTER<br>HAMILTON-FELDMAN |
|--|---|---|

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

In her April 18, 2016 decision, the Special Master found that a preponderance of the medical evidence indicates that petitioner suffered a shoulder injury related to vaccine administration (“SIRVA”), which was causally related to the flu vaccination he received on September 18, 2013. The parties have now addressed the amount of compensation to be awarded in this case.

**I. Compensation**

Based upon the evidence of record, respondent proffers that a lump sum of \$2,647.30, which amount represents reimbursement of a State of Illinois Medicaid lien, should be jointly awarded petitioner, who will endorse the payment to the appropriate state agency, and the Illinois Department of Healthcare and Family Services. In addition, petitioner should be awarded a lump sum of \$55,000.00, which amount represents all other elements of compensation to which

petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>1</sup> Petitioner agrees.

## **II. Form of the Award**

The parties recommend that the compensation provided should be made through lump sum payments as follows:

- a) in the form of a check for \$2,647.30, payable jointly to petitioner and to:

Illinois Department of Healthcare and Family Services  
Bureau of Collections  
Technical Recovery Section  
PO Box 19174  
Springfield, Illinois 62794-9174  
Case No. 03-108-0000007716

Petitioner agrees to endorse the payment to the appropriate state agency; AND

- b) in the form of a check for \$55,000.00, payable to petitioner.

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

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

/s/ **DOUGLAS ROSS**

DOUGLAS ROSS

Trial Attorney

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DATE: June 17, 2016