

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-154V

Filed: July 6, 2016

UNPUBLISHED

CHRISTINA GARBER,

*

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Petitioner,

*

v.

*

Damages Decision Based on Proffer;
Tetanus, Diphtheria, acellular Pertussis
("Tdap") Vaccine; Shoulder Injury
Related to Vaccine Administration;
("SIRVA"); Special Processing Unit
("SPU")

SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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*

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

Justine Walters, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On February 1, 2016, Christina Garber ("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 alleged that she "received a Tetanus, diphtheria, and pertussis ("Tdap") vaccine on February 19, 2015 and thereafter suffered from a shoulder injury, which was caused in fact by the above-stated vaccination." Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 9, 2016, the undersigned issued a ruling on entitlement, finding petitioner entitled to compensation for her shoulder injury. On July 5, 2016, respondent filed a proffer on award of compensation ("Proffer") indicating petitioner should be awarded \$75,657.82. Proffer at 1-2. 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¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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.* at 2. 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 \$75,657.82 in the form of a check payable to petitioner, Christina Garber.** 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

CHRISTINA GARBER,)	
)	
Petitioner,)	
)	
v.)	No. 16-154V
)	Chief Special Master Dorsey
)	ECF
SECRETARY OF HEALTH AND)	SPU
HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On February 1, 2016, petitioner, Christina Garber, filed a petition for compensation under the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-10 to -34 (“Vaccine Act”), alleging that she developed a shoulder injury as a result of receiving a tetanus, diphtheria, acellular pertussis (“Tdap”) vaccine on February 19, 2015. On May 6, 2016, respondent filed her Rule 4(c) Report stating that petitioner’s shoulder injury is consistent with a shoulder injury related to vaccine administration (“SIRVA”) and conceding that her SIRVA is compensable under the Vaccine Act. Accordingly, on May 9, 2016, Chief Special Master Dorsey issued a Ruling on Entitlement finding that petitioner is entitled to compensation for her SIRVA.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$75,657.82, which represents all elements of compensation to which petitioner is entitled under

42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment of \$75,657.82 in the form of a check payable to petitioner.

Petitioner agrees.

Respectfully submitted,

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Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA
Director
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CATHARINE E. REEVES
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s/ Justine Walters
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DATE: July 5, 2016

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 lost earnings, and future pain and suffering.