

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-609V

Filed: December 21, 2016

UNPUBLISHED

\*\*\*\*\*

KATHLEEN NOLAN,

\*

\*

Petitioner,

\*

v.

\*

\*

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

\*

\*

\*

Respondent.

\*

\*

\*\*\*\*\*

*John DeFazio, Viola Cummings and Lindsay, LLP, Niagara Falls, NY, for petitioner.  
Gordon Shemin, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On May 24, 2016, 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”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) following a September 16, 2013 influenza (“flu”) vaccine. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 15, 2016, a ruling on entitlement was issued, finding petitioner entitled to compensation for a SIRVA. On December 20, 2016, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$120,416.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

---

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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$120,416.00 in the form of a check payable to petitioner, Kathleen Nolan.** 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

---

<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.

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

KATHLEEN NOLAN,	)	
	)	
	)	
Petitioner,	)	No. 16-609V
	)	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 August 11, 2016, conceding entitlement in this case. Based upon the evidence of record, respondent proffers that petitioner should be awarded \$120,416.00. This represents all elements of competition to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a) for her vaccine-related injury.<sup>1</sup> Petitioner agrees.

**II. Form of the Award**

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment described below, and request that the Special Master’s decision and the Court’s judgment award the following:

A lump sum of \$120,416.00 in the form of a check payable to petitioner, Kathleen Nolan. This amounts accounts for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

---

<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, future lost earnings, and future pain and suffering.

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

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

CATHARINE E. REEVES  
Acting Deputy Director  
Torts Branch, Civil Division

ANN D. MARTIN  
Senior Trial Attorney  
Torts Branch, Civil Division

/s/ Gordon Shemin  
GORDON SHEMIN  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Phone: (202) 616-4208  
Fax: (202) 353-2988

Dated: December 20, 2016