

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-0877V

Filed: September 29, 2016

UNPUBLISHED

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MARION KITTY,

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Petitioner,

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v.

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SECRETARY OF HEALTH

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AND HUMAN SERVICES,

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Respondent.

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

*Darry R. Wishard, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On July 25, 2016, Marion Kitty (“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 an injury to her right shoulder as a result of an influenza (“flu”) vaccine she received on October 2, 2015. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 26, 2016, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On September 29, 2016, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$100,450.87. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the

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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

proffered award. 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 \$100,450.87, in the form of a check payable to petitioner, Marion Kitty.** 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.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
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SECRETARY OF HEALTH  
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No. 16-877V ECF

Chief Special Master Dorsey

**PROFFER ON AWARD OF COMPENSATION<sup>1</sup>**

**I. Procedural History**

On July 25, 2016, Marion Kitty (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. She alleges that, as a result of receiving the influenza (“flu”) vaccine on October 2, 2015, she suffered a right shoulder injury. Petition at 1-3.

On August 26, 2016, respondent filed her Vaccine Rule 4(c) report, conceding causation-in-fact for petitioner’s shoulder injury related to vaccine administration (“SIRVA”). On that same day, the Chief Special Master issued a ruling on entitlement, finding that petitioner was entitled to compensation for SIRVA.

**II. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$100,450.87, which represents all elements of compensation to which petitioner would be

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<sup>1</sup> This Proffer does not include attorneys’ fees and costs, which the parties intend to discuss after the Damages Decision is issued.

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

### **III. Form of the Award**

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$100,450.87, in the form of a check payable to petitioner.<sup>2</sup>

Petitioner agrees.

Respectfully submitted,

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/s/Darryl R. Wishard  
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Dated: September 29, 2016

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<sup>2</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.