

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-1151V

Filed: September 20, 2017

STEPHANIE ROBERTS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Master Sanders

Decision on Proffer; Damages; Influenza
("Flu") Vaccine; Tetanus-diphtheria-
acellular pertussis ("Tdap") Vaccine;
Guillain-Barre Syndrome ("GBS").

Martin Rubenstein, Staten Island, New York, for Petitioner.

Robert Paul Coleman, III, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On September 16, 2016, Stephanie Roberts ("Petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program.² 42 U.S.C. §§ 300aa-10 to -34 (2012). Petitioner alleges that she suffered from Guillain-Barré Syndrome ("GBS") as a result of receiving influenza and tetanus-diphtheria-acellular pertussis ("Tdap") vaccinations on October 14, 2013. Ruling on Entitlement 1, ECF No. 27.

On August 31, 2017, the undersigned issued a Ruling on Entitlement. *Id.* The undersigned agreed with Respondent's Rule 4(c) report in which he concedes that Petitioner is entitled to compensation based on a theory of causation-in-fact. *Id.* at 1-2. Shortly thereafter,

¹ This decision shall be posted 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), a party has 14 days to identify and move to delete medical or other information that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, the undersigned agrees that the identified material fits within the requirements of that provision, such material will be deleted from public access.

² 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," "the Act," or "the Program"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

the undersigned issued a Damages Order directing the parties to discuss the appropriate amount of compensation in this case. Damages Order, ECF No. 28.

Respondent filed a Proffer on Award of Compensation (“Proffer”) on September 20, 2017. Proffer, ECF No. 29. 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 Proffer, attached as Appendix A, the undersigned awards Petitioner:

- A. A lump sum payment of \$525,479.32, representing compensation for lost earnings (\$370,642.94); pain and suffering (\$150,000.00); and unreimbursed expenses (\$4,836.38), in the form of a check payable to [P]etitioner; and**
- B. A lump sum payment of \$1,745.42, representing compensation for satisfaction of the New York State Medicaid lien, payable jointly to [P]etitioner and**

**Charla Harrigan, Representative
HMS, Inc. Casualty Recovery Unit
P.O. Box 167887
Irving, T.X. 75016-7887
Recovery Case Number: 110521
Medicaid ID: MJ13638Y**

Petitioner agrees to endorse this payment to HMS, Inc. Casualty Recovery Unit.

Proffer 3.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** herewith.³

IT IS SO ORDERED.

s/Herbrina D. Sanders
Herbrina D. Sanders
Special Master

³ 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**

| | | |
|---------------------|---|------------------------|
| STEPHANIE ROBERTS, |) | |
| |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 16-1151V (ECF) |
| |) | Special Master Sanders |
| |) | |
| SECRETARY OF HEALTH |) | |
| AND HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |
| |) | |

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On September 16, 2016, Stephanie Roberts (“petitioner”) filed a Petition (“Petition”) for compensation under the National Childhood Vaccine Injury Act of 1986, as amended, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act”). Petitioner alleges that she suffered from Guillain-Barré syndrome (“GBS”) as a result of receiving influenza and tetanus-diphtheria-acellular pertussis (“Tdap”) vaccinations on October 14, 2013. Petition at 1.

On August 30, 2017, respondent filed his Vaccine Rule 4(c) Report, and on August 31, 2017, the Court found petitioner entitled to compensation based on a theory of causation-in-fact.

II. Items of Compensation

A. Lost Earnings

The parties agree that based upon the evidence of record, petitioner has suffered past loss of earnings and will suffer a loss of earnings in the future. Therefore, respondent proffers that

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

petitioner should be awarded lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Respondent proffers that the appropriate award for petitioner's lost earnings is \$370,642.94. Petitioner agrees.

B. Pain and Suffering

Respondent proffers that petitioner should be awarded \$150,000.00 in actual and projected pain and suffering. Petitioner agrees.

C. Unreimbursed Expenses

Respondent proffers that petitioner should be awarded \$4,836.38 in actual and projected unreimbursed expenses. Petitioner agrees.

D. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy a New York State Medicaid lien in the amount of \$1,745.42, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action that New York State may have against any individual as a result of any Medicaid payments New York State has made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about October 14, 2013, under Title XIX of the Social Security Act.

III. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a combination of lump sum payments as described below, and requests that the Special Master's decision and the Court's judgment award the following:²

² 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.

A. A lump sum payment of \$525,479.32, representing compensation for lost earnings (\$370,642.94); pain and suffering (\$150,000.00); and unreimbursed expenses (\$4,836.38), in the form of a check payable to petitioner.

B. A lump sum payment of \$1,745.42, representing compensation for satisfaction of the New York State Medicaid lien, payable jointly to petitioner and

Charla Harrigan, Representative
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Petitioner agrees to endorse this payment to HMS, Inc. Casualty Recovery Unit.

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

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

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

ALTHEA WALKER DAVIS
Senior Trial Counsel
Torts Branch, Civil Division

s/ Robert P. Coleman III
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DATED: September 20, 2017