

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-1533V

Filed: November 30, 2017

UNPUBLISHED

HEATHER RYAN, also known as,
HEATHER CAHILL

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for petitioner.

Debra A. Filteau Begley, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On November 16, 2016, 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”). Petitioner alleges that that her influenza (“flu”) vaccination on September 30, 2015 caused her to suffer a shoulder injury related to vaccine administration (“SIRVA”). Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 26, 2017, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On November 29, 2017, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded compensation of \$115,000.00 representing past and future pain and suffering, \$8,500.00 representing

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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).

past and future wage loss, \$700.00 representing past unreimbursed medical expenses, and \$615.06 for payment of a Medicaid lien. 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.

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

- A. A lump sum payment of \$124,200.00 which represents compensation for past and future pain and suffering (\$115,000.00), past and future wage loss (\$8,500.00), and past unreimbursed expenses (\$700.00), in the form of a check payable to petitioner, and**
- B. A lump sum payment of \$615.06, representing compensation for satisfaction of the State of Louisiana Medicaid lien, in the form of check payable jointly to petitioner and**

**Optum
75 Remittance Drive
Suite 6019
Chicago, IL 60675-6019**

Petitioner agrees to endorse this payment to the State of Louisiana.

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**

HEATHER RYAN also known as *
HEATHER CAHILL, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

No. 16-1533V
CHIEF SPECIAL MASTER
NORA BETH DORSEY

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

The Court issued a Ruling on Entitlement on May 26, 2017. Based upon the evidence of record, respondent proffers that petitioner should be awarded compensation as follows:

- A. \$115,000.00, for past and future pain and suffering,
- B. \$8,500.00, for past and future wage loss,
- C. \$700.00, for past unreimbursed medical expenses, and
- D. \$615.06, for payment of a Medicaid lien, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Louisiana 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, under Title XIX of the Social Security Act.

These amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

¹ Should petitioner die prior to the 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.

II. Form of the Award

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

Respondent recommends that compensation provided to petitioner should be made as follows:

- A. A lump sum payment of \$124,200.00 in the form of a check payable to petitioner, and
- B. A lump sum payment of \$615.06, representing compensation for satisfaction of the State of Louisiana Medicaid lien, in the form of check payable jointly to petitioner and

Optum
75 Remittance Drive
Suite 6019
Chicago, IL 60675-6019

Petitioner agrees to endorse this payment to the State of Louisiana.

Petitioner agrees.

Respectfully submitted,

CHAD A. READLER
Principal Deputy Assistant Attorney General

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

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

/s/ DEBRA A. FILTEAU BEGLEY
DEBRA A. FILTEAU BEGLEY
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) 616-4181

Dated: November 29, 2017