

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: February 7, 2019

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STEPHEN ACKER,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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No. 17-242V

Special Master Sanders

Decision on Proffer; Damages; Influenza  
("Flu") Vaccine; Guillain-Barré Syndrome  
("GBS")

*Paul A. Kinne*, Gingras, Cates & Luebke, S.C., Madison, WI, for Petitioner.

*Lara Ann Englund*, United States Department of Justice, Washington, D.C., for Respondent.

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

On February 21, 2017, Stephen Acker ("Petitioner") filed a petition for compensation pursuant to the National Vaccine Injury Compensation Program.<sup>2</sup> 42 U.S.C. §§ 300aa-10 to 34 (2012). Petitioner alleged that the quadrivalent influenza vaccine he received on October 1, 2015, caused him to develop Guillain-Barré Syndrome ("GBS"). Pet. at 1, ECF No. 1. Petitioner further alleged that "[a]s a result of GBS, [he] was rendered largely bed-ridden[.]" *Id.* at 3.

On September 26, 2017, Respondent filed a Rule 4(c) Report, in which he concluded that "[P]etitioner [had] suffered an injury that is compensable under the National Childhood Vaccine Injury Act of 1986[.]" Resp't's Proffer at 1, ECF No. 32. On September 26, 2017, the undersigned issued a Ruling on Entitlement consistent with Respondent's Rule 4(c) Report. ECF No. 18.

On January 5, 2019, Respondent filed a Proffer on Award of Compensation ("Proffer").

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<sup>1</sup> This decision shall be posted on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2012)). **This means the Decision will be available to anyone with access to the Internet.** As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(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.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755.

ECF No. 32. 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 lump sum payment of \$255,829.99, representing all elements of compensation to which Petitioner would be entitled under 42 U.S.C. § 300aa-15(a), in the form of a check payable to Petitioner.**

*Id.*

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court shall enter judgment in accordance herewith.<sup>3</sup>

**IT IS SO ORDERED.**

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

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<sup>3</sup> Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. Vaccine Rule 11(a).

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

STEPHEN ACKER,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 17-242V
	)	Special Master Herbrina Sanders
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

On September 26, 2017, respondent filed a Vaccine Rule 4(c) report concluding that petitioner suffered an injury that is compensable under the National Childhood Vaccine Injury Act of 1986, as amended, 42 U.S.C. §§300aa-10 to -34. Accordingly, on September 26, 2017, the Special Master issued a Ruling on Entitlement.

**I. Items of Compensation**

Respondent proffers that petitioner should be awarded \$255,829.99. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of **\$255,829.99** in the form of a check payable to petitioner.<sup>1</sup> This

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<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 pain and suffering, and future lost wages.

lump sum payment represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

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

Respectfully submitted,

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Assistant Attorney General

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

CATHARINE E. REEVES  
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s/ LARA A. ENGLUND  
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Dated: February 5, 2019