

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1062V

Filed: October 17, 2018

UNPUBLISHED

MICHAELANNE GRAEFF,

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)

Robert H. Pedroli, Jr., Pedroli & Gauthier, LLC, Clayton, MO, for petitioner.

Justine Elizabeth Walters, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On August 4, 2017, Michaelanne Graeff (“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 she suffered from a shoulder injury related to vaccine administration (“SIRVA”) as a result of receiving an influenza (“flu”) vaccine to her left shoulder on September 22, 2015. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 21, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation. On October 17, 2018, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$137,500.00 for actual and projected pain and suffering (which has been reduced to net present value) and \$560.26 for past unreimbursable expenses for a total of \$138,060.26. Proffer at 1-2. In

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

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 petitioner a lump sum payment of \$138,060.26**, (comprised of \$137,500.00 for projected pain and suffering reduced to net present value, and \$560.26 for past unreimbursable expenses) **in the form of a check payable to petitioner, Michaelanne Graeff**. 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**

MICHAELANNE GRAEFF,)	
)	
)	
Petitioner,)	
)	
v.)	No. 17-1062V
)	Chief Special Master Dorsey
)	ECF
SECRETARY OF HEALTH AND)	SPU
HUMAN SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On August 4, 2017, petitioner, Michaelanne Graeff, filed a petition for compensation under the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act”), alleging that she developed a shoulder injury related to vaccine administration (“SIRVA”) as a result of receiving an influenza (“flu”) vaccine on September 22, 2015. On May 18, 2018, respondent filed a Rule 4(c) Report indicating that petitioner is entitled to compensation for SIRVA. For the purposes of this proffer, the term “vaccine-related” is as described in Respondent’s Rule 4(c) Report. On May 21, 2018, Chief Special Master Dorsey issued a Ruling on Entitlement finding that petitioner is entitled to compensation for SIRVA.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$137,500.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents her expenditure of past unreimbursable expenses related to her SIRVA. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$560.26. Petitioner agrees.

C. Medicaid Lien

Petitioner represents that there are no outstanding Medicaid liens against her.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment of \$138,060.26 in the form of a check payable to petitioner.¹ This represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

Respectfully submitted,

JOSEPH H. HUNT
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Torts Branch, Civil Division

GABRIELLE M. FIELDING
Assistant Director
Torts Branch, Civil Division

¹ 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.

s/ Justine Walters

JUSTINE WALTERS

Trial Attorney

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DATE: October 16, 2018