

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 17-1359V

Filed: September 4, 2019

UNPUBLISHED

MARY PERRY,

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)

*Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.*

*Christine Mary Becer, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On September 27, 2017, 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 from a left shoulder injury related to vaccine administration (“SIRVA”) as a result of receiving the influenza (“flu”) vaccine on November 2, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 30, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On August 30, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$50,053.96 (\$50,000.00 for pain and suffering and \$53.96 for unreimbursed expenses) and funds to satisfy the State of Pennsylvania Medicaid lien in the amount of \$2,446.70. Proffer at 1-

<sup>1</sup> The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** 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. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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).

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

2. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* 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. A lump sum payment of **\$2,446.70**, representing compensation for satisfaction of the State of Pennsylvania Medicaid lien, payable jointly to petitioner and

The Department of Human Services  
Attention: Jessica L. Frederick  
Bureau of Program Integrity  
Division of Third Party Liability, Recovery Section  
P.O. Box 8486  
Harrisburg, Pennsylvania 17105-8486

Petitioner agrees to endorse this payment to the Department of Human Services; and

- B. A lump sum payment of **\$ \$50,053.96** (comprising of \$50,000.00 for pain and suffering and \$53.96 for unreimbursed expenses), in the form of a check payable to petitioner, Mary Perry. This amount represents compensation for all damages that would be available under § 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

---

<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  
OFFICE OF SPECIAL MASTERS**

---

MARY PERRY,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 17-1359V  
Chief Special Master Dorsey  
ECF

**RESPONDENT'S PROFFER OF DAMAGES**

**I. Procedural History**

On April 19, 2019, 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 April 30, 2019, the Chief Special Master issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for her Shoulder Injury Related to Vaccine Administration ("SIRVA") as a result of the influenza vaccine she received on November 2, 2016.

**II. Items of Compensation and Form of the Award**

Based upon the evidence of record, respondent proffers, and the parties recommend, that compensation be made through a lump sum as described below, and request that the Chief Special Master's decision and the Court's judgment award the following:

**A. Medicaid Lien**

Respondent proffers that M.P. should be awarded funds to satisfy the State of Pennsylvania Medicaid lien in the amount of \$2,446.70, which represents full satisfaction of any

right of subrogation, assignment, claim, lien, or cause of action the State of Pennsylvania may have against any individual as a result of any Medicaid payments that the State of Pennsylvania 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 November 2, 2016, under Title XIX of the Social Security Act. Reimbursement of the State of Pennsylvania lien shall be made through a lump sum payment of \$2,446.70, representing compensation for satisfaction of the State of Pennsylvania lien, payable jointly to petitioner and

The Department of Human Services  
Attention: Jessica L. Frederick  
Bureau of Program Integrity  
Division of Third Party Liability, Recovery Section  
P.O. Box 8486  
Harrisburg, Pennsylvania 17105-8486

Petitioner agrees to endorse this payment to the Department of Human Services.

B. Pain and Suffering and Out-of-Pocket Expenses

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$50,053.96 (\$50,000.00 for pain and suffering and \$53.96 for unreimbursed expenses).

This represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>1</sup> Petitioner agrees. Petitioner is a competent adult. Evidence of guardianship is not required in this case.

---

<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 lost earnings, and future pain and suffering.

Respectfully submitted,

JOSEPH H. HUNT  
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/Christine M. Becer  
CHRISTINE M. BECER  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Tel: (202) 616-3665

Dated: 8/28/19