

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1420V

Filed: June 17, 2019

UNPUBLISHED

AUDREA DALE,

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)

*Jessica Olins, Maglio Christopher & Toale, PA, Washington, DC, for petitioner.*

*Camille Michelle Collett, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On October 3, 2017, Audrea Dale (“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 a left shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine she received on November 17, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 2, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On June 17, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$102,297.72

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<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 Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

(representing \$97,500.00 for pain and suffering, \$1,608.93 in lost wages, and \$3,188.79 in out-of-pocket expenses). Proffer at 1. 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 lump sum payment of \$102,297.72, (representing \$97,500.00 for pain and suffering, \$1,608.93 in lost wages, and \$3,188.79 in out-of-pocket expenses), in the form of a check payable to petitioner, Audrea Dale.** 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

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<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

AUDREA DALE,	)	
	)	
Petitioner,	)	No. 17-1420V
	)	Chief Special Master
v.	)	Nora Beth Dorsey
	)	ECF
	)	
SECRETARY OF HEALTH	)	
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

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

On November 2, 2018, respondent filed her Rule 4(c) Report, in which she conceded entitlement. On November 2, 2018, the Court issued a Ruling on Entitlement, finding that petitioner is entitled to compensation for her left shoulder injury. Based on the evidence in the record, respondent proffers that petitioner receive an award of a lump sum of \$102,297.72 (including \$97,500.00 for pain and suffering, \$1,608.93 in lost wages, and \$3,188.79 in out-of-pocket expenses) in the form of a check payable to petitioner. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner is entitled.<sup>1</sup> Petitioner agrees. This proffer does not address final attorneys’ fees and litigation costs. Petitioner is additionally entitled to reasonable attorneys’ fees and litigation costs, to be determined at a later date upon petitioner submitting substantiating documentation.

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

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<sup>1</sup> 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.

case.

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

HEATHER L. PEARLMAN  
Assistant Director  
Torts Branch, Civil Division

s/Camille M. Collett  
CAMILLE M. COLLETT  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Telephone: (202) 616-4098

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