In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. 17-1939V
Filed: September 17, 2019
UNPUBLISHED

CYNTHIA ALEXANDER,

                Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

                Respondent.

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Table Injury; Influenza (Flu) Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

*Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for
petitioner.*
*Brittany Alexandra Anne Ditto, U.S. Department of Justice, Washington, DC, for
respondent.*

RULING ON ENTITLEMENT[1]

Dorsey, Chief Special Master:

On December 13, 2017, 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 a Shoulder Injury Related to
Vaccine Administration (SIRVA) as a result of her December 19, 2016 influneza ("flu")

---

[1] The undersigned intends to post this ruling on the United States Court of Federal Claims' website. **This
means the ruling 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 Because this unpublished ruling contains a reasoned explanation for the action in this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).

[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).

vaccine. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On September 12, 2019, respondent filed his Rule 4(c) report in which he concedes that petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, respondent that he

> has reviewed the facts of this case and concluded that petitioner's claim meets the Table criteria for SIRVA. Specifically, petitioner had no history of pain, inflammation, or dysfunction in the affected shoulder prior to vaccine, she presented with pain and reduced range of motion in the shoulder where she got the vaccination, and no other condition was present to explain her symptoms. The table requires that shoulder pain occurs within forty-eight hours of vaccination. 42 C.F.R. §100.3(c)(10). Although petitioner's first office visit for shoulder pain was three weeks post-vaccination, her phone records support her statement that her arm ached within one day and she began calling medical providers nine days post-vaccination. *See* Pet. Exs. 7, 17 at 1-3. The totality of the evidence supports petitioner's claim of arm pain within forty-eight hours.

Id. at 3. Respondent further agrees that

> [w]ith respect to other statutory and jurisdictional issues, the records show that the case was timely filed, that the vaccine was received in the United States, and that petitioner satisfies the statutory severity requirement by suffering the residual effects or complications of her injury for more than six months after vaccine administration. *See* 42 U.S.C. §§300aa-11(c)(1)(D)(i); Pet. Ex. Petitioner avers that she has not received any compensation in the form of award or settlement in connection with the vaccine-related injury. *See* 42 U.S.C. §§ 300aa-11(a)(5) and - 11(c)(1)(E), Pet. Ex. 7.

Id. at 4.

In view of respondent's position and the evidence of record, the undersigned finds that petitioner is entitled to compensation.

IT IS SO ORDERED.

<u>**s/Nora Beth Dorsey**</u>
Nora Beth Dorsey
Chief Special Master