

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 17-1942V

Filed: January 28, 2019

UNPUBLISHED

DERHYL MIDDLETON,

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.*

*Voris Edward Johnson, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On December 14, 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 a shoulder injury related to vaccine administration (“SIRVA”) caused by the influenza vaccine she received on September 27, 2016. Petition at 1, ¶¶ 1, 5. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 19, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for her SIRVA. On January 28, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded

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 Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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

\$60,381.17, representing \$60,000.00 for pain and suffering and \$381.17 for past unreimbursable 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 \$60,381.17, representing \$60,000.00 for pain and suffering and \$381.17 for past unreimbursable expenses in the form of a check payable to petitioner, Derhyl Middleton.** 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**

DERHYL MIDDLETON,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 17-1942V (ECF)
	)	Chief Special Master Dorsey
	)	
SECRETARY OF HEALTH	)	
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

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

On October 15, 2018, respondent, the Secretary of Health and Human Services, filed his Rule 4(c) Report conceding entitlement to compensation in this matter. On October 19, 2018, the Court entered its Ruling on Entitlement, finding petitioner Derhyl Middleton entitled to Vaccine Act compensation. Respondent now proffers that petitioner receive a compensation award consisting of a lump sum of **\$60,381.17** in the form of a check payable to petitioner, Richard Denham.<sup>1</sup> This amount consists of \$60,000.00 for pain and suffering and \$381.17 for past unreimbursed expenses, and represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner is entitled.<sup>2</sup>

Petitioner agrees with the proffered award of \$60,381.17.<sup>3</sup>

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<sup>1</sup> Petitioner is a competent adult. No guardianship is required.

<sup>2</sup> Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

<sup>3</sup> This proffer does not include any award for attorneys’ fees and costs that may be awarded pursuant to 42 U.S.C. § 300aa-15(e).

Respectfully submitted,

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Dated: January 28, 2019