

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-597V

UNPUBLISHED

DANIEL ANDREWS, Personal
Representative of the Estate of
NANCY ANDREWS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 29, 2020

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

John Robert Howie, Howie Law, PC, Dallas, TX, for petitioner.

Catherine E. Stolar, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On April 22, 2019, Nancy Andrews filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”).³ Petitioner alleged that she suffered a shoulder injury related to vaccine administration (SIRVA) after receiving an influenza vaccination on October 21, 2017. Petition at 1. Petitioner further alleged the vaccination was administered in the United States, she experienced the residual effects of this injury for more than six months, and there has been no prior award or settlement of a civil action on her behalf as a result of

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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). **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, I agree that the identified material fits within this definition, I 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).

³ Petitioner passed away on June 10, 2020, due to causes unrelated to her vaccination. ECF No. 22. On October 9, 2020, Petitioner's son, Daniel Andrews as the Personal Representative of the Estate of Nancy Andrews, was a substituted as the proper party. ECF No. 24.

her condition.. Petition at 1, 10. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 10, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On December 23, 2020, Respondent filed a proffer on award of compensation ("Proffer") indicating Petitioner should be awarded \$80,000.00. Proffer at 1. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$80,000.00 in the form of a check payable to Petitioner, Daniel Andrews, as Personal Representative of the Estate of Nancy Andrews.** 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.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

⁴ 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.

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|---------------------------------------|---|-------------------------------|
| |) | |
| DANIEL ANDREWS, Personal |) | |
| Representative of the Estate of NANCY |) | |
| ANDREWS, |) | |
| |) | |
| Petitioner, |) | No. 19-597V |
| |) | Chief Special Master Corcoran |
| |) | ECF |
| v. |) | |
| |) | |
| SECRETARY OF HEALTH AND |) | |
| HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |
| |) | |

On April 22, 2019, Nancy Andrews filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“the Vaccine Act” or “the Act”), as amended. She claimed that her receipt of an influenza (“flu”) vaccination on October 21, 2017, caused her to develop a Shoulder Injury Related to Vaccine Administration (“SIRVA”). On June 10, 2020, Ms. Andrews passed away. *See* Sept. 23, 2020 Mot. to Substitute, Doc. No. 22, at 3-4 (death certificate). On September 15, 2020, Ms. Andrews’ son, Daniel Andrews, was appointed as Personal Representative of the Estate of Nancy Andrews. *See id.* at 5 (Sept. 15, 2020 state court order). Counsel for petitioner subsequently filed a “Suggestion of Death” and “Motion to Substitute Proper Party” on September 23, 2020, requesting that Daniel Andrews, as personal representative, and hereinafter referred to as “petitioner,” be substituted in as the proper party.¹ *Id.* at 1-2.

¹ This motion was granted by the Court on October 9, 2020. *See* Oct. 9, 2020 Order, Doc. No. 24.

On November 9, 2020, respondent filed a Rule 4(c) Report, Doc. No. 25, concluding that Ms. Andrews sustained an injury that is compensable under the Act, that is a SIRVA injury as defined in the Vaccine Injury Table. *See* 42 C.F.R. § 100.3. On November 10, 2020, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. *See* Nov. 10, 2020 (Unpublished) Ruling on Entitlement, Doc. No. 28.

I. Compensation for Vaccine Injury-Related Items

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$80,000.00 for Ms. Andrews' actual pain and suffering, as provided under Section 300aa-15(a)(4) of the Vaccine Act. This amount represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following: a lump sum payment of \$80,000.00, in the form of a check payable to petitioner, Daniel Andrews, as Personal Representative of the Estate of Nancy Andrews.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Daniel Andrews, as Personal Representative of the Estate of Nancy Andrews: **\$80,000.00**

Respectfully submitted,

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/s/ Catherine E. Stolar
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DATED: 12/23/20