

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1195V

Filed: October 28, 2021

UNPUBLISHED

LINDA LEASURE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Master Horner

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

*Leah V. Durant, Law Offices of Leah V. Durant, PLLC, Washington D.C., for petitioner.
Kyle E. Pozza, U.S. Department of Justice, Washington, DC, for respondent.*

DECISION AWARDING DAMAGES¹

On August 14, 2019, Linda Leasure 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). (ECF No. 1.)

On July 13, 2021, a ruling on entitlement was issued, finding petitioner entitled to compensation for a Shoulder Injury Related to Vaccine Administration (SIRVA). On October 26, 2021, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded a lump sum of \$123,369.54 consisting of \$120,000.00 for actual pain and suffering and \$3,369.54 for past unreimbursed expenses. (ECF No. 36) 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.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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.

Pursuant to the terms stated in the attached Proffer, **I award petitioner a lump sum payment of \$123,369.54, representing \$120,000.00 for actual pain and suffering and \$3,369.54 for past unreimbursed expenses, in the form of a check payable to petitioner.** 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.³

IT IS SO ORDERED.

s/Daniel T. Horner
Daniel T. Horner
Special Master

³ 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**

LINDA LEASURE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 19-1195V
Special Master Horner
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On July 9, 2021, respondent filed a Vaccine Rule 4(c) report conceding that entitlement to compensation was appropriate under the terms of the Vaccine Act. ECF No. 29. On July 13, 2021, Special Master Horner issued a Ruling on Entitlement, finding that petitioner received an influenza (“flu”) vaccination on October 31, 2018, and was entitled to vaccine compensation for her Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, and related sequela. ECF No. 30.

I. Amount of Compensation

Respondent now proffers that, based on the Special Master’s entitlement ruling and the evidence of record, petitioner should be awarded a lump sum of **\$123,369.54**, consisting of the following: \$120,000.00 for actual pain and suffering, and \$3,369.54 for past unreimbursed expenses. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made as described below, and request that the Special Master's damages decision and the Court's judgment award the following: ¹

A. Petitioner's Damages

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of **\$123,369.54**, in the form of a check payable to petitioner.

Petitioner agrees.

B. Guardianship

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

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

DARRYL R. WISHARD
Assistant Director
Torts Branch, Civil Division

¹ 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 pain and suffering, and future lost wages.

/s/ Kyle E. Pozza
KYLE E. POZZA
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) 616-3661
E-mail: Kyle.Pozza@usdoj.gov

Dated: October 26, 2021