

CORRECTED

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1554V

UNPUBLISHED

ZAHRA LEISI ZARNAGH,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 21, 2021

Special Processing Unit (SPU); Joint
Stipulation on Damages; Influenza
(Flu) Vaccine; Shoulder Injury
Related to Vaccine Administration
(SIRVA)

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

*Colleen Clemons Hartley, U.S. Department of Justice, Washington, DC, for
Respondent.*

DECISION ON JOINT STIPULATION¹

On October 4, 2019, Zahra Leisi Zarnagh 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”), which included brachial plexopathy, which was causally related to the influenza (“flu”) vaccine she received on December 13, 2017, in her left deltoid.³ Petition at 1, ¶¶ 1, 14; Stipulation, filed at Dec. 21, 2021, ¶¶ 1-2, 4. Petitioner further alleges that she received the flu vaccine within the United States, that she suffered the residual effects of her SIRVA for more than six months, and that neither she nor any other party has filed a civil action or received compensation for her SIRVA. Petition at ¶¶ 1, 15,

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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 section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

³ Also, on December 13, 2017, Petitioner received pneumococcal and Zoster vaccines in her right deltoid. Petition at ¶ 1; see Exhibit 1 at 3 (vaccine record).

17-18; Stipulation at ¶¶ 3-5. “Respondent denies that [P]etitioner sustained a SIRVA Table injury; denies that the vaccines caused [P]etitioner’s alleged shoulder injuries, including brachial plexopathy, or any other injury; and denies that her current condition is a sequelae of a vaccine-related injury.” Stipulation at ¶ 6.

Nevertheless, on December 21, 2021, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. I find the stipulation reasonable and adopt it as my decision awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **I award \$35,320.68 as follows:**

- 1. A lump sum payment of \$35,000.00 in the form of a check payable to Petitioner; and**
- 2. A lump sum payment of \$320.68, representing reimbursement of a Medicaid lien for services rendered to Petitioner by the State of Michigan, in the form of a check payable jointly to Petitioner and the State of Michigan, and mailed to:**

Michigan Department of Health and Human Services
Member: Zahra Leisi Zarnagh
File No.: 1089967261
Third Party Liability Division
P.O. Box 30053
Lansing, MI 48909.

Stipulation at ¶ 8. Petitioner agrees to endorse the check to the State of Michigan for satisfaction of the Medicaid lien. This amount represents compensation for all items of damages that would be available under Section 15(a). *Id.*

I approve the requested amount for Petitioner’s compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, 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.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

ZAHRA LEISI ZARNAGH,

Petitioner,

V.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 19-1554V

Chief Special Master Corcoran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Zahra Leisi Zarnagh, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 *et seq.* (the “Vaccine Program”). The petition seeks compensation for injuries related to petitioner’s receipt of the influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).

2. Petitioner received the flu vaccination on December 13, 2017.¹

3. The vaccine was administered within the United States.

4. Petitioner alleges that she sustained a Shoulder Injury Related to Vaccine Administration (“SIRVA”) within the time period set forth in the Table, or in the alternative, that her shoulder injury was caused by the vaccine. She further alleges that she experienced the residual effects of this condition for more than six months.

¹ The flu vaccination was administered in the left deltoid. On the same date, petitioner also received a pneumococcal (Prevnar-13) in the right deltoid and a zoster vaccination in the right arm, subcutaneous. The zoster vaccination is not contained in the Table.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her condition.

6. Respondent denies that petitioner sustained a SIRVA Table injury; denies that the vaccines caused petitioner's alleged shoulder injuries, including brachial plexopathy, or any other injury; and denies that her current condition is a sequelae of a vaccine-related injury.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$35,000.00, which amount represents compensation for pain and suffering, in the form of a check payable to petitioner; and
- b. A lump sum of \$320.68 representing reimbursement of the State of Michigan Medicaid lien, in the form of a check payable jointly to petitioner and

Michigan Department of Health and Human Services
Member: Zahra Leisi Zarnagh
File No.: 1089967261
Third Party Liability Division
P.O. Box 30053
Lansing, MI 48909

This lump sum represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the state of Michigan may have against any individual as a result of any Medicaid payments the state of Michigan has made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her alleged

vaccine-related injury suffered on or about December 13, 2017, under Title XIX of the Social Security Act. Petitioner agrees to endorse this check to the state of Michigan.

These amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursed expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the flu vaccination or any other vaccination on or around December 13, 2017, as alleged by petitioner in a petition for vaccine compensation filed on or about October 4, 2019, in the United States Court of Federal Claims as petition No. 19-1554V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this

Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that a vaccine caused petitioner's alleged left shoulder injury, or any other injury or condition.

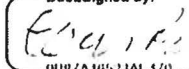
18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

Respectfully submitted,

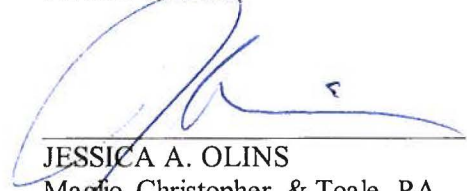
PETITIONER:

DocuSigned by:



ZAHRA LEISI ZARNAGH

**ATTORNEY OF RECORD FOR
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JESSICA A. OLINS
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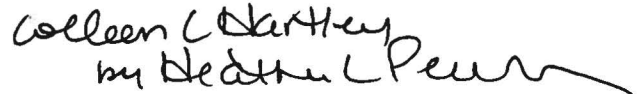
**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**

Dale Mishler, D/Sc, APRN, for

TAMARA OVERBY
Acting Director, Division of Injury
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Health Resources and Services
Administration
U.S. Department of Health
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Rockville, MD 20857

Dated: 12/21/2021

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