

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-0428V

UNPUBLISHED

TIMOTHY BROPHY,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 8, 2021

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Guillain-  
Barre Syndrome (GBS)

*Jessica E. Choper, Britcher Leone, L.L.C., Glen Rock, NJ, for petitioner.*

*Sarah Christina Duncan, U.S. Department of Justice, Washington, DC, for respondent.*

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

On April 14, 2020, Timothy Brophy 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 that he suffered Guillain Barre Syndrome (“GBS”) as a result of an influenza (“flu”) vaccine received on October 17, 2018. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 15, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for GBS. On January 8, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$95,545.83. Proffer at 2. 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.

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 Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

<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).

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$95,545.83 (representing \$90,000.00 for pain and suffering and \$5,545.83 for past lost earnings) 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.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**  
Brian H. Corcoran  
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**

TIMOTHY BROPHY,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 20-428V
	)	Chief Special Master Corcoran
SECRETARY OF HEALTH AND HUMAN	)	ECF
SERVICES,	)	
	)	
Respondent.	)	
	)	

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

On April 14, 2020, Timothy Brophy (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), as amended. Petitioner alleges that he suffered Guillain-Barré syndrome (“GBS”) as a result of an influenza (“flu”) vaccine administered to him on October 17, 2018.<sup>1</sup> Petition at 1. On July 22, 2020, petitioner amended his petition to correct the vaccination date to September 17, 2018. Amended Petition at 1. On December 14, 2020, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report recommending that compensation be awarded, and the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation on December 15, 2020. ECF No. 26; ECF No. 27.

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<sup>1</sup> The petition alternately referred to the vaccination date as October 17, 2018, and September 17, 2018. Petition at 1, 2.

**I. Items of Compensation**

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$90,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Lost Earnings

The parties agree that based upon the evidence of record, petitioner has suffered actual loss of earnings. Therefore, respondent proffers that petitioner should be awarded actual lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Respondent proffers that the appropriate award for petitioner's lost earnings is \$5,545.83. Petitioner agrees.

These amounts 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 should 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<sup>2</sup>: a lump sum payment of \$95,545.83, representing compensation for pain and suffering (\$90,000.00) and past lost earnings (\$5,545.83), in the form of a check payable to petitioner, Timothy Brophy.

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<sup>2</sup> 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 lost earnings and future pain and suffering.

**III. Summary of Recommended Payments Following Judgment**

Lump sum payable to petitioner, Timothy Brophy:

**\$95,545.83**

Respectfully submitted,

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Acting Assistant Attorney General

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

HEATHER L. PEARLMAN  
Acting Deputy Director  
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s/ Sarah C. Duncan  
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DATED: January 8, 2021