

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 09-0123V

Filed: 15 January 2010

* * * * *	*	
KIMBERLY TOTZKAY, Next Friend of	*	
SHELBY WHALE, Minor,	*	
	*	
Petitioner,	*	
	*	Decision on Proffer and Acceptance;
v.	*	HPV; Multiple Mandible Fractures
	*	
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
* * * * *	*	

Scott William Rooney, Esq., Nemes Rooney and McKindles, Farmington Hills, Michigan, for Petitioner;
Debra A. Filteau Begley, Esq., U.S. Department of Justice, Washington, District of Columbia, for Respondent.

UNPUBLISHED DECISION UPON PROFFER AND ACCEPTANCE¹

On 2 March 2009, Petitioner brought a petition under the National Childhood Vaccine Injury Act of 1986 (“Vaccine Act” or “Act”).² On 4 June 2009, Respondent filed a Report, pursuant to Vaccine Rule 4(c), conceding entitlement to compensation. On 29 December 2009, Respondent filed a proffer to compensate Petitioner for all injuries compensable by the Vaccine Program. On 14 January 2010, Petitioner sent for filing an Acceptance of the Proffer, accepting the amounts contemplated in the Proffer.

¹ Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire decision” may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

² The statutory provisions governing the Vaccine Act are found in 42 U.S.C. §§300aa-10 *et seq.* (West 1991 & Supp. 1997). Hereinafter, reference will be to the relevant subsection of 42 U.S.C.A. §300aa.

The Proffer contemplates the following payments:

- A. A lump sum payment of \$4,500.00 in the form of a check payable to Petitioner, which amount represents partial compensation for vaccine-related items of compensation to which Petitioner is entitled under 42 U.S.C. § 300aa-15(a).
- B. An amount sufficient to purchase an annuity contract, subject to the conditions described in Section II.-B. of Respondent's Proffer, which will provide payments, paid to the life insurance company from which the annuity will be purchased, for all remaining vaccine-related items of compensation to which Petitioner is entitled under 42 U.S.C. § 300aa-15(a):

Beginning on 17 January 2013, \$643.71 per month for four years certain only. The last benefit would be payable on 17 December 2016.

The lump sum and annualized payments shall be as follows:

YEAR	SHELBY'S AGE	LUMP SUM / ANNUALIZED CERTAIN PAYMENTS
2010	15	\$4,500.00
2011	16	
2012	17	
2013	18	\$7,724.52
2014	19	\$7,724.52
2015	20	\$7,724.52
2016	21	\$7,724.52

Petitioner accepts these proffered amounts as the total amount attributable to the vaccine-related injury conceded to be entitled to compensation.

Wherefore, by the proffer and acceptance of the parties, and for good cause shown, the Court awards the foregoing compensation for the vaccine-related injury(ies) for which Petitioner shall be compensated. The Court accepts these terms as just and reasonable. In the absence of a motion for review filed pursuant to Vaccine Rules 23 and 24, the Clerk is directed to enter judgment in accord with this Decision.³

The parties are encouraged at this time to discuss attorney fees and costs incurred by Petitioner, so that Petitioner may expeditiously file an application for compensation of attorney fees and costs in a timely fashion, not later than 180 days after the entry of judgment on this Decision.

³ Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review of this decision by a Court of Federal Claims judge. Then, under Vaccine Rule 12(a), Petitioner may expedite payment by filing an election to accept the judgment.

Any problems or queries should be directed to my law clerk, Isaiah Kalinowski, Esq., at 202-357-6351.

IT IS SO ORDERED.

Richard B. Abell
Special Master