

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 12-766V
(Not to be published¹)

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ELEANOR D. HERNANDEZ, *
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 Petitioner, *
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 v. *
*
SECRETARY OF HEALTH AND *
HUMAN SERVICES *
*
 Respondent. *
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Filed: May 16, 2013

Decision by Proffer; Damages:
Influenza Vaccine; Shoulder Injury
Related to Vaccine Administration
("SIRVA")

DECISION

HASTINGS, Special Master.

This is an action seeking an award under the National Vaccine Injury Compensation Program² on account of an injury suffered by Eleanor D. Hernandez. On February 11, 2013, respondent filed a report conceding that petitioner is entitled to compensation in this case.

After discussions between the parties, on May 15, 2013, respondent filed "Respondent's Proffer on Award of Compensation." Petitioner's counsel, Elizabeth Muldowney, contacted a

¹ Because this document contains an explanation for my action in this case, I intend to post this document on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Therefore, as provided by Vaccine Rule 18(b), each party has 14 days 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, this entire document will be available to the public. *Id.*

² The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 *et seq.* (2006 ed.). Hereinafter, for ease of citation, all "§" references will be to 42 U.S.C. (2006 ed.).

member of my staff by telephone, on May 15, 2013, to confirm that petitioner accepts the Proffer as a reasonable measure of the amount of the award in this case.

In the Proffer, the parties have agreed that petitioner is entitled to immediate compensation, as follows:

- A lump sum of \$87,500.00, in the form of a check payable to petitioner, representing compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

Under the statute governing the Program, as well as the “Vaccine Rules” adopted by this court, the special master must now enter a decision endorsing that Proffer, and the clerk must enter judgment, in order to authorize payment of the award. See § 300aa-12(d)(3)(A) and (e)(3); § 300aa-13(a); Vaccine Rules 10(a), 11(a).³

I have reviewed the file, and based on that review, I conclude that the respondent’s Proffer appears to be an appropriate one. (I have attached the Proffer to this Decision). Accordingly, my decision is that a Program award shall be made to petitioner in the amount set forth above. In the absence of a timely-filed motion for review of this Decision, the clerk shall enter judgment in accordance herewith.

IT IS SO ORDERED.

/s/ George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master

³ The “Vaccine Rules of the United States Court of Federal Claims” are found in Appendix B of the Rules of the United States Court of Federal Claims.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

ELEANOR D. HERNANDEZ,

Petitioner,

v.

**SECRETARY OF HEALTH
AND HUMAN SERVICES,**

Respondent.

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No. 12-766V (ECF)
SPECIAL MASTER
GEORGE L. HASTINGS, JR.

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On November 13, 2012, Eleanor D. Hernandez (“Petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act” or “the Act”), 42 U.S.C. §§ 300aa-10 to -34. Petitioner alleges that she received the influenza (“flu”) vaccine on November 20, 2009, and thereafter suffered “soreness in her left shoulder that developed into pain in her left shoulder and arm” that has been diagnosed as “neuropathic pain.” See Petition at 1-3. Petitioner submitted documentation in support of her claim on November 26 and December 11, 2012. The Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report on February 11, 2013, conceding that Petitioner suffered a shoulder injury related to vaccine administration (“SIRVA”) following the flu vaccination, and recommending that petitioner be awarded compensation. Respondent hereby submits the following proffer regarding the award of compensation.

I. Items of Compensation

A. Future Medical Care Expenses

Respondent proffers that based on the evidence of record, Petitioner is not entitled to an award for projected unreimbursable medical care expenses incurred from the date of judgment as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(1)(A). Petitioner agrees.

B. Lost Future Earnings

Respondent proffers that based upon the evidence of record, Petitioner has not, and is not likely to suffer a loss of earnings as a result of her vaccine injury. Accordingly, Petitioner should not be awarded lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Petitioner should be awarded a lump sum of \$87,500.00 for Petitioner's actual and projected pain and suffering as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees

D. Past Unreimbursable Expenses

Respondent proffers that based upon the evidence of record, Petitioner has not incurred any past unreimbursable expenses related to her vaccine-related injury. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no outstanding Medicaid liens related to Petitioner's vaccine-related injury.

II. Form of the Award

The parties recommend that the compensation provided to Petitioner should be made

through lump sum payment and request that the special master's decision and the Court's judgment award the following:

A lump sum payment of \$87,500.00, representing compensation for actual and projected pain and suffering, payable to Petitioner.

III. Summary of Recommended Payments Following Judgment

A. Lump sum paid to Petitioner: \$ 87,500.00

Respectfully submitted,

STUART F. DELERY
Acting Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

MICHAEL P. MILMOE
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Torts Branch, Civil Division

s/GLENN A. MACLEOD
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DATE: May 15, 2013