

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-488V

Filed: April 24, 2018

UNPUBLISHED

██████████,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Tetanus Diphtheria acellular  
Pertussis (Tdap) Vaccine;  
Encephalitis

*Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.*

*Adriana Ruth Teitel, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On April 19, 2016, petitioner 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 she suffered injuries resulting from adverse effects of a tetanus, diphtheria, and pertussis (“Tdap”) vaccination, received on September 9, 2014. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 24, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for encephalitis. On April 23, 2018, respondent filed a proffer on award of compensation (“Proffer”)<sup>3</sup> indicating petitioner should be awarded all items of

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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). 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, the undersigned agrees that the identified material fits within this definition, the undersigned 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).

<sup>3</sup> Respondent filed his Rule 4(c) Report recommending that compensation be awarded and his Proffer on Award of Compensation as a single document. (See ECF No. 52.) Only that part of the document

compensation listed in an attached summary of a life care plan, \$185,000.00 for actual and projected pain, suffering, and emotional distress, which amount reflects a reduction to net present value, and \$8,059.00 for past unreimbursable expenses. Proffer at 4-5. In the Proffer, respondent represented that petitioner agrees with the proffered award. Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards:**

- **A lump sum payment of \$262,060.00, representing compensation for pain and suffering (\$185,000.00), past unreimbursable expenses (\$8,059.00), and life care expenses for Year One (\$69,001.00), in the form of a check payable to petitioner, [REDACTED]; and**
- **An amount sufficient to purchase the annuity contract described in section II(B) of the proffer.**

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

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>4</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

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identified as the Proffer on Award of Compensation, as well as the accompanying summary of life care items, is attached hereto.

<sup>4</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.