

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1535V

UNPUBLISHED

KENNETH A. BRADLEY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 11, 2019

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Jimmy A. Zgheib, Zgheib Sayad, P.C., White Plains, NY, for petitioner.

Glenn Alexander MacLeod, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On October 4, 2018, Kenneth A. Bradley 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 that he suffered a left shoulder injury related to vaccine administration ("SIRVA") as a result of an influenza ("flu") vaccination received on January 26, 2018. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 4, 2019, a ruling on entitlement was issued, finding Petitioner entitled to compensation for his SIRVA. On December 10, 2019, Respondent filed a proffer on award of compensation ("Proffer") indicating Petitioner should be awarded \$85,423.06, including a lump sum of \$85,000.00 payable to Petitioner and a lump sum

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

of \$423.06 representing compensation for satisfaction of the State of Maine's Medicaid lien. Proffer at 1-2. 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.

Pursuant to the terms stated in the attached Proffer, **I award the following:**

1. **A lump sum payment of \$85,000.00 in the form of a check payable to Petitioner; and**
2. **A lump sum payment of \$423.06, representing compensation for satisfaction of the State of Maine's Medicaid lien, payable jointly to Petitioner and:**

Treasurer, State of Maine
c/o Kelly S. Kramer
Reimbursement Specialist
Third Party Liability
DHHS/OMS
11 State House Station
Augusta, ME 04333-0011

Petitioner agrees to endorse this payment to the State of Maine.

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ 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

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KENNETH A. BRADLEY, *
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Petitioner, *
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v. *
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SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
*
Respondent. *

No. 18-1535V (ECF)
CHIEF SPECIAL MASTER
BRIAN H. CORCORAN

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On November 1, 2019, respondent filed his Vaccine Rule 4(c) report conceding that petitioner’s claim meets the Table criteria for SIRVA. On November 4, 2019, the Court entered its Ruling on Entitlement, finding petitioner, Kenneth A. Bradley, entitled to Vaccine Act compensation. Respondent herein proffers the following amount(s) of reasonable compensation due petitioner.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded a lump sum total of \$85,423.06, which amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

Respondent proffers that (as included in the amount above), petitioner should be awarded funds to satisfy the State of Maine’s Medicaid lien in the amount of \$423.06, which represents

¹ 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 medical expenses and future pain and suffering.

full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Maine may have against any individual as a result of any Medicaid payments the State of Maine has made to or on behalf of petitioner from the date of his eligibility for benefits through the date of judgment in this case as a result of his vaccine-related injury suffered on or about January 26, 2018, under Title XIX of the Social Security Act.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through the lump sum payments described below, and request that the Chief Special Master's decision, and the Court's judgment, award the following:

(a): A lump sum payment of \$85,000.00 in the form of a check payable to petitioner, Kenneth A. Bradley.² Petitioner agrees.

(b): A lump sum payment of \$423.06, representing compensation for satisfaction of the State of Maine's Medicaid lien, payable jointly to petitioner and,

Treasurer, State of Maine
c/o Kelly S. Kramer
Reimbursement Specialist
Third Party Liability
DHHS/OMS
11 State House Station
Augusta, ME 04333-0011

Petitioner agrees to endorse this payment to the State of Maine.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

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

² Petitioner is a competent adult. No guardianship is required.

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

/s/ **GLENN A. MACLEOD**
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Torts Branch, Civil Division
U.S. Department of Justice
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Washington, D.C. 20044-0146
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DATE: December 10, 2019