

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 08-650V

Filed: July 29, 2016

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UNPUBLISHED

ERIC REED and JEANNA REED, as  
Parents and Natural Guardians of  
I.R., a minor,

Petitioners,

v.

Chief Special Master Dorsey

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

Interim Attorneys' Fees & Costs;  
Stipulation

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Anne C. Toale, Maglio, Christopher & Toale, Sarasota, FL, for petitioners.

Ryan D. Pyles, United States Department of Justice, Washington, DC, for respondent.

### **DECISION ON INTERIM ATTORNEYS' FEES AND COSTS**<sup>1</sup>

On September 15, 2008, Eric Reed and Jeanna Reed ("petitioners") filed a petition for compensation under the National Vaccine Injury Compensation Program ("the Program")<sup>2</sup> on behalf of their minor child, I.R. Petitioners filed an amended petition on February 6, 2012, and filed a second amended petition on March 16, 2015, alleging that I.R. suffered a significant aggravation of a mitochondrial disorder as a result of receiving the Proquad vaccine on December 30, 2005. Second Amended Petition at ¶ 44.

On July 27, 2016, the parties filed a stipulation of facts regarding interim attorneys' fees and costs. Petitioner requests a total award of interim attorneys' fees and costs in the amount of \$250,000.00. Stipulation at ¶ 3. Respondent does not object to this amount being awarded at

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<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this decision on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the entire decision will be available to the public. Id.

<sup>2</sup> The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa.

this time. Id. at ¶ 4. The stipulation provides that:

Nothing in this Stipulation, including the amount set forth in paragraph 3, should be construed as an admission, concession, or waiver by either party as to any of the matters raised by Petitioners' Application for Attorneys' Fees and Costs, including but not limited to the hourly rates requested, the number of hours requested, and other litigation-related costs.

Id. at ¶ 5. The parties agree that the interim amount of \$250,000.00 will be deducted from the final award of attorneys' fees and costs issued at the conclusion of this case. Id. at ¶ 8.

The undersigned finds that petitioner is entitled to an award of interim attorneys' fees and costs under the facts and circumstances of this case and that the agreed upon amount is reasonable. See Shaw v. Sec'y of Health & Human Servs., 609 F.3d 1372, 1375 (Fed. Cir. 2010) (holding that "[w]here the claimant establishes that the cost of litigation has imposed an undue hardship and that there exists a good faith basis for the claim, it is proper for the special master to award interim attorneys' fees"); Avera v. Sec'y of Health & Human Servs., 515 F.3d 1343, 1352 (Fed. Cir. 2008).

**Accordingly, the undersigned hereby awards a total of \$250,000.00 in the form of a check payable jointly to petitioners and petitioners' counsel, Anne Carrión Toale, for interim attorneys' fees and costs.**

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.<sup>3</sup>

**IT IS SO ORDERED.**

s/Nora Beth Dorsey  
Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.