

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: September 13, 2016

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KIMBERLY FAORO and TYSON  
FAORO, as Parents and Natural Guardians of

\* H.E.F.,

\*

Petitioners,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

\* \* \* \* \*

UNPUBLISHED

No. 10-704V

Chief Special Master Dorsey

Attorneys' Fees and Costs; Reasonable  
Amount to Which Respondent Does Not  
Object.

Martin A. Diaz, Iowa City, IA, for petitioner.

Jennifer Leigh Reynaud, U.S. Department of Justice, Washington, DC, for respondent.

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

On October 15, 2010, Kimberly Faoro and Tyson Faoro, as parents and natural guardians of H.E.F., ("petitioners") filed a petition under the National Vaccine Injury Compensation Program ("the Program")<sup>2</sup> alleging that H.E.F. developed a seizure disorder and developmental delay as a result of the diphtheria-tetanus-pertussis ("DTaP"), hepatitis B ("hep B"), polio

<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned's 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, 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 National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) ("Vaccine Act"). All citations in this order to individual sections of the Act are to 42 U.S.C. § 300aa.

("IVP"), haemophilus influenza type B ("Hib"), pneumococcal, ("PCV") and rotavirus vaccines that she received on December 28, 2007. An entitlement hearing was held in Washington, DC, on June 3-4, 2014. On October 15, 2014, the undersigned awarded interim attorneys' fees and costs in the amount of \$48,739.92. Decision dated October 15, 2014 (ECF No. 118). A decision was entered denying entitlement on January 29, 2016, and petitioners then filed a motion for review. On April 11, 2016, petitioners' motion for review was denied and the petition was dismissed.

On August 22, 2016, petitioners filed a motion for attorneys' fees and costs. Petitioner's Motion ("Pet'rs' Mot.") dated August 22, 2016 (ECF No. 153). Petitioners request \$72,149.00 in attorneys' fees and \$4,094.25 in costs, for a total award of \$76,243.25. Id. at 2. Petitioners' counsel also filed detailed time and expense records for work performed and documentation supporting petitioners' counsel's hourly rate. Pet'rs' Mot., Exs. C-E. In accordance with General Order #9, petitioners state that they previously incurred litigations costs but that the Court has already reimbursed those costs. Pet'rs' Mot., Exhibit G. Respondent did not file a response to petitioners' motion for attorneys' fees and costs.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. 42 U.S.C. §§ 300aa-15(e). Upon reviewing petitioners' entire fee application and noting respondent's lack of objection, the undersigned finds reasonable the number of hours expended, the hourly rates requested, and the costs incurred. The undersigned thus **GRANTS** petitioners' motion for attorneys' fees and costs in full.

**Accordingly, an award should be made as follows:**

**A lump sum in the amount of \$76,243.25 in the form of a check payable jointly to petitioners and their attorney, Martin A. Diaz.**

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court is directed to enter judgment in accordance herewith.<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.