

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 14-329V
(Not to be published)

BARBARA SWEAT, *on behalf of* S.S., *a minor*,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Filed: June 16, 2016

Attorney's Fees and Costs;
Motion for Relief from Judgment;
RCFC 60(b).

Lawrence Joseph Disparti, Disparti Law Group, PA , Holiday, FL, for Petitioner.

Amy Paula Kokot, U.S. Dep't of Justice, Washington, DC, for Respondent.

DECISION GRANTING RELIEF FROM JUDGMENT¹

On April 21, 2014, Barbara Sweat filed a petition on behalf of her minor child, S.S., seeking compensation under the National Vaccine Injury Compensation Program ("the Vaccine Program").² Petitioner alleged that S.S. developed a brachial plexus neuritis, also known as Parsonage-Turner syndrome, as a result of receiving the tetanus-diphtheria-acellular pertussis ("Tdap") and hepatitis A vaccinations. ECF No. 1. The parties subsequently filed a stipulation on

¹ Because this decision contains a reasoned explanation for my actions in this case, I will 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 (2012). As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the published decision's inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen 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 whole decision will be available to the public. *Id.*

² 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.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

April 13, 2015 (ECF No. 23), detailing an amount to be awarded to Petitioner, which served as the basis for my decision awarding damages dated April 15, 2015 (ECF No. 24). The parties later filed a stipulation regarding attorney's fees and costs on May 14, 2015 (ECF No. 28), which I adopted as my fees decision dated August 26, 2015 (ECF No. 29), and was reduced to judgment on June 19, 2015 (ECF No. 33).

Petitioner has now informed me that she incurred additional fees and costs for the establishment of guardianship in this claim that were not accounted for in her May 6, 2015, Motion for Attorney Fees and Costs.³ Because it was contemplated by the parties in the damages stipulation that a guardianship proceeding would be initiated as part of the claim, these costs are reasonable and were anticipated by the parties.

Based on the above, Petitioner now moves for relief from the Fees Judgment. Petitioner is requesting supplemental fees and cost related the guardianship proceeding in the amount of \$1,903.00. Respondent has represented that she has no objection to the additional fees and costs requested.

Under Vaccine Rule 36, Appendix B, RCFC (the "Vaccine Rules"), a party may seek relief from judgment pursuant to RCFC 60. Ms. Sweat's motion invokes Rule 60(b), which delineates five specific circumstances for relief, plus a catch-all permitting a party to obtain modification of a decision based upon "any other reason that justifies relief." RCFC 60(b).

Here, I find that Petitioner has establish a basis for revising the Fees Judgment under Rule 60(b). I find Rule 60(b)(1), which permits relief on the grounds of "mistake, inadvertence, surprise, or excusable neglect," applicable to the additional costs associated with the guardianship proceeding. *See* RCFC 60(b)(1). The fees associated with the guardianship proceeding were not included in the original application as a result of a mistake or inadvertence, as the parties stipulation clearly contemplated the creation of a guardianship. Furthermore, I find that the Rule 60(b) requirement that relief may only be obtained by motion and a showing of "just terms" has been satisfied in this case. RCFC 60(b).

The motion does not challenge or dispute the underlying merits of the prior fee decisions. The requested correction will merely increase the size of the Fees Judgment to reflect additional work performed on this case. The motion is also unopposed by Respondent, further underscoring

³ Petitioner originally filed an unopposed motion for leave to file for attorney's fees and costs outside of the timeframe allowed by statute, dated April 4, 2016. ECF No. 34. However, during a status conference on May 23, 2016, I instructed the parties that this motion should be stricken, and instead a motion for relief from the judgment should be filed. Petitioner did so on June 7, 2016. ECF No. 35. Accordingly, I will strike Petitioner's Unopposed Motion for Leave to file Attached Motion for Fees and Costs Out of Time (ECF No. 34) as improperly filed.

the extent to which it is the view of the parties that the error in question, while worthy of correction, is substantively minor. Such circumstances establish a sound basis for revising the Fees Judgment under Rule 60(b).

CONCLUSION

Accordingly, **(1) the Clerk of the Court is hereby instructed to strike Petitioner's Unopposed Motion for Leave to file Attached Motion for Fees and Costs Out of Time (ECF No. 34), as improperly filed, and (2) Petitioner is awarded an additional \$1,903.00 in attorney's fees and costs in this action in the form of a check made payable jointly to Petitioner and Petitioner's counsel, Disparti Law Group, PA.** 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 these terms.⁴

IT IS SO ORDERED.

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

⁴ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by jointly filing notice renouncing their right to seek review.