

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 15-952V

Filed: November 15, 2016

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JOETTE MALTBY,

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UNPUBLISHED

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Petitioners,

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Special Master Gowen

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v.

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Attorneys' Fees and Costs

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

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Respondent.

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\* \* \* \* \*

Andrew D. Downing, Van Cott & Talamante, PLLC, Phoenix, AZ, for petitioner.

Alexis B. Babcock, United States Department of Justice, Washington, DC, for respondent.

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

On September 1, 2015, Joette Maltby ("petitioner") filed a petition pursuant to the National Vaccine Injury Compensation Program.<sup>2</sup> 42 U.S.C. §§ 300aa-1 to 34 (2012). Petitioner alleged that as a result of receiving an influenza ("flu") vaccination on January 23, 2014, she developed peripheral neuropathy. Petition at Preamble, ¶ 19. On November 14, 2016, the parties filed a stipulation in which they stated that a decision should be entered awarding compensation, and decision awarding petitioner compensation pursuant to the terms of the parties' stipulation was issued that same day.

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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 ruling on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). 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).

<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 (2012) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

On July 22, 2016, petitioner filed an unopposed motion for attorneys' fees and costs, stating that petitioner incurred \$15,478.50 in attorneys' fees and \$814.70 in attorneys' costs, for a total of \$16,293.20 in attorneys' fees and costs. Petitioner's ("Pet.") Motion ("Mot.") at 1. Petitioner stated, however, that "[b]ased on discussions with and objections raised by Respondent, Petitioner hereby amends the Application for Attorneys' Fees and Costs to request reimbursement in the total amount of \$14,000.00. Respondent has no objection to this amount." Id.

On August 30, 2016,<sup>3</sup> petitioner filed a supplemental motion for attorneys' fees and costs, requesting an additional \$540.00 for fees associated with a telephone conference between counsel and Dr. Andreassen of Family Medical Center. Pet. Supplemental ("Supp.") Mot., dated Aug. 30, 2016, at 1. "Petitioner's counsel has spoken with counsel for the Respondent and they have agreed to add the \$540.00 to the previously agreed-to total. Id. Accordingly, petitioner's amended request totals \$14,540.00 in attorneys' fees and costs. Id. In accordance with General Order #9, petitioner's counsel states that petitioner did not incur any expenses associated with her claim. Id.; Pet. Mot. at 1.

The Vaccine Act permits an award of reasonable attorneys' fees and costs under 42 U.S.C. section 300aa-15(e). Based on the reasonableness of petitioners' request and the lack of objection by respondent, the undersigned **GRANTS** the request for approval and payment of attorneys' fees and costs, pursuant to 42 U.S.C. § 300 aa-15(e).

An award should be made as follows:

- (1) A lump sum of \$14,540.00, payable jointly to petitioner and petitioner's counsel, Andrew D. Downing, of Van Cott & Talamante, PLLC, for 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 herewith.<sup>4</sup>

**IT IS SO ORDERED.**

s/ Thomas L. Gowen  
Thomas L. Gowen  
Special Master

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<sup>3</sup> Petitioner also filed a second supplemental motion for attorneys' fees and costs on October 18, 2016, requesting the additional \$540.00 for the conference with Dr. Andreassen. See Pet. Supp. Mot., dated Oct. 18, 2016, at 1. This second motion appears to have been filed in error, as it is nearly identical to the first supplemental motion filed August 30, 2016.

<sup>4</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.