

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1129V

Filed: October 20, 2016

UNPUBLISHED

JAMIE SARACINO,

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Petitioner,

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v.

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Attorneys' Fees and Costs;
Special Processing Unit ("SPU")

SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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Franklin John Caldwell, Jr., Maglio, Christopher & Toale, PA, Sarasota, FL, for petitioner.

Voris Edward Johnson, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

Dorsey, Chief Special Master:

On October 6, 2015, petitioner 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 the influenza vaccination that she received on November 25, 2014 caused her to suffer a shoulder injury. On April 28, 2016, the undersigned issued a decision awarding compensation to petitioner based on respondent's proffer. (ECF No. 21).

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). 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, the undersigned agrees that the identified material fits within this definition, the undersigned 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).

On September 19, 2016, petitioner filed a motion for attorneys' fees and costs. (ECF No. 27). Petitioner requests attorneys' fees in the amount of \$16,605.10 and attorneys' costs in the amount of \$1,919.22 for a total amount of \$18,524.32. *Id.* at 1-2. In accordance with General Order #9, petitioner's counsel represents that petitioner incurred no out-of-pocket expenses.

On September 21, 2016, respondent filed a response to petitioner's motion. (ECF No. 28). Respondent argues that "[n]either the Vaccine Act nor Vaccine Rule 13 contemplates any role for respondent in the resolution of a request by a petitioner for an award of attorneys' fees and costs." *Id.* at 1. Respondent adds, however, that she "is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." *Id.* at 2. Additionally, she "asserts that a reasonable amount for fees and costs in the present case would fall between \$12,000.00 to \$14,000.00" but provides no basis or explanation for how she arrived at this proposed range. *Id.* at 3.

On September 28, 2016, petitioner filed a reply. (ECF No. 29). Petitioner disputes the validity of respondent's proposed fee range and contends that petitioner has sufficiently substantiated the fee request. *Id.*

On October 18, 2016, petitioner filed a Notice of Supplemental Authority alerting the undersigned to Special Master Corcoran's issuance of the October 14, 2016, decision in *Dezern v. Sec'y of HHS*, No. 13-643V, wherein the special master awarded attorneys' fees to petitioner's counsel at forum rates. (ECF No. 30.)

The undersigned has reviewed the billing records submitted with petitioner's request. In the undersigned's experience, the request appears reasonable, and the undersigned finds no cause to reduce the requested hours or rates.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Based on the reasonableness of petitioner's request, the undersigned **GRANTS** petitioner's motion for attorneys' fees and costs.

Accordingly, the undersigned awards the total of \$18,524.32³ as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel F. John Caldwell, Jr.⁴

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See generally *Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir.1991).

⁴ Petitioner requests that the check be forwarded to Maglio Christopher & Toale, PA, 1605 Main Street, Suite 710, Sarasota, FL, 34236.

The clerk of the court shall enter judgment in accordance herewith.⁵

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

⁵ 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.