

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: April 16, 2021

* * * * *

BRADLEY GROW,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

* No. 16-013V
* Special Master Sanders
*
* UNPUBLISHED
*
*
* Attorneys' Fees and Costs
*
*
*

Lisa A. Roquemore, Law Office of Lisa A. Roquemore, Rancho Santa Margarita, CA, for
Petitioner;

Catherine E. Stolar, United States Dep't of Justice, Washington, DC, for Respondent.

DECISION AWARDING ATTORNEYS' FEES AND COSTS¹

On January 4, 2016, Bradley Grow ("Petitioner") filed a petition for compensation pursuant to the National Vaccine Injury Compensation Program.² 42 U.S.C. §300aa-10 et seq. (2012). Petitioner alleged that the influenza vaccine he received on January 13, 2013, caused him to develop brachial neuritis, also known as Parsonage Turner Syndrome. Pet. at 4 (ECF No. 1). On November 24, 2020, the undersigned issued her decision denying compensation and dismissing the petition. 2020 WL 7366332 (Fed. Cl. Spec. Mstr. Nov. 24, 2020).

¹ The undersigned intends to post this Ruling on the United States Court of Federal Claims' website. **This means the Ruling will be available to anyone with access to the Internet.** 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. Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims'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).

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 December 22, 2020, Petitioner filed a motion for attorneys' fees and costs. ECF No. 80 ("Fees App."). Petitioner requests total final attorneys' fees and costs in the amount of \$122,138.48, representing \$103,064.40 in attorneys' fees, \$16,159.13 in attorneys' costs,³ and \$2,914.95 in costs personally incurred by petitioner. Fees App. at 2. Respondent responded to the motion on December 22, 2020, indicating that "Respondent is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." Resp't's Resp. at 2. ECF No. 82. Petitioner did not file a reply thereafter.

This matter is now ripe for consideration.

I. Reasonable Attorneys' Fees and Costs

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). The Federal Circuit has approved the lodestar approach to determine reasonable attorneys' fees and costs under the Vaccine Act. *Avera v. Sec'y of Health & Human Servs.*, 515 F.3d 1343, 1348 (Fed. Cir. 2008). This is a two-step process. *Id.* First, a court determines an "initial estimate . . . by 'multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate.'" *Id.* at 1347–48 (quoting *Blum v. Stenson*, 465 U.S. 886, 888 (1984)). Second, the court may make an upward or downward departure from the initial calculation of the fee award based on specific findings. *Id.* at 1348.

It is "well within the special master's discretion" to determine the reasonableness of fees. *Saxton v. Sec'y of Health & Human Servs.*, 3 F.3d 1517, 1521–22 (Fed. Cir. 1993); *see also Hines v. Sec'y of Health & Human Servs.*, 22 Cl. Ct. 750, 753 (1991). ("[T]he reviewing court must grant the special master wide latitude in determining the reasonableness of both attorneys' fees and costs."). Applications for attorneys' fees must include contemporaneous and specific billing records that indicate the work performed and the number of hours spent on said work. *See Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313, 316–18 (2008). Such applications, however, should not include hours that are "excessive, redundant, or otherwise unnecessary." *Saxton*, 3 F.3d at 1521 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)).

Reasonable hourly rates are determined by looking at the "prevailing market rate" in the relevant community. *See Blum*, 465 U.S. at 895. The "prevailing market rate" is akin to the rate "in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Id.* at 895, n.11. Petitioners bear the burden of providing adequate evidence to prove that the requested hourly rate is reasonable. *Id.*

a. Hourly Rate

The decision in *McCulloch* provides a framework for consideration of appropriate ranges for attorneys' fees based upon the experience of the practicing attorney. *McCulloch v. Sec'y of Health & Human Servs.*, No. 09-293V, 2015 WL 5634323, at *19 (Fed. Cl. Spec. Mstr. Sept. 1, 2015), *motion for recons. denied*, 2015 WL 6181910 (Fed. Cl. Spec. Mstr. Sept. 21, 2015). The

³ This amount is comprised of \$409.13 in firm costs and a balance of \$15,750.00 for Petitioner's expert after Petitioner personally incurred \$2,500.00 for a retainer fee. Fees App. at 2 n.2.

Court has since updated the *McCulloch* rates, and the Attorneys' Forum Hourly Rate Fee Schedules for 2015–2016, 2017, 2018, 2019, and 2020 can be accessed online.⁴

Petitioner requests the following hourly rates for the work of his counsel, Ms. Lisa Roquemore: \$365.00 per hour for work performed in 2014 and 2015, \$400.00 per hour for 2016, \$409.00 per hour for work performed in 2017 and 2018, \$421.00 per hour for work performed in 2019 and 2020. These rates are consistent with what Ms. Roquemore has previously been awarded for her Vaccine Program work, and the undersigned finds them to be reasonable herein for work performed in the instant case.

b. Reasonable Number of Hours

Attorneys' fees are awarded for the "number of hours reasonably expended on the litigation." *Avera*, 515 F.3d at 1348. Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton*, 3 F.3d at 1521 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)).

Upon review, the undersigned finds that the overall hours spent on this matter appear to be largely reasonable. The only minor issues concern time billed by paralegals to perform administrative tasks such as formatting and bates stamping exhibits, and excessive overall time on the handling of routine filings by the Court and Respondent. Ms. Roquemore's firm appears to utilize a process where her paralegal downloads new filings and then presents them to Ms. Roquemore for review. The practical effect of this process is that it ensures at least twelve minutes is billed for the review of all new filings, no matter how routine they may be. This is excessive in the undersigned's experience. While each individual entry represents a small amount of time, the cumulative effect of this billing practice over the course of an entire case which lasts several years, such as this one, is not insignificant. These issues have been noted and reduced by other special masters previously. *See, e.g., J.T. v. Sec'y of Health & Human Servs.*, No. 12-618V, 2018 WL 4623163, at *3-4 (Fed. Cl. Spec. Mstr. Apr. 20, 2018). Upon review, a reasonable reduction for these entries is \$2,500.00. Petitioner is therefore awarded final attorneys' fees of \$100,564.40.

c. Attorney Costs

Like attorneys' fees, a request for reimbursement of attorneys' costs must be reasonable. *Perreira v. Sec'y of Health & Human Servs.*, 27 Fed. Cl. 29, 34 (Fed. Cl. 1992). Petitioner requests a total of \$16,159.13 in attorneys' costs, comprised of acquiring medical records, postage, copies, and work performed by Petitioner's medical expert, Dr. M. Eric Gershwin. The undersigned has reviewed these costs and finds them to be reasonable and supported with adequate documentation. Petitioner is therefore awarded final attorneys' costs of \$16,159.13.

d. Petitioner's Costs

Pursuant to General Order No. 9, Petitioner states that he has personally incurred costs of \$2,914.95 related to his petition. This amount is comprised of the court's filing fee, a retainer for

⁴ The OSM Fee Schedules are available at: <http://www.cofc.uscourts.gov/node/2914>. The hourly rates contained within the schedules are updated from the decision in *McCulloch*, 2015 WL 5634323.

Dr. Gershwin, and postage. Petitioner has provided adequate documentation supporting these costs and they shall be fully reimbursed.

II. Conclusion

In accordance with the Vaccine Act, 42 U.S.C. §15(e) (2012), the undersigned has reviewed the billing records and costs in this case and finds that Petitioner's request for fees and costs, other than the reductions delineated above, is reasonable. Based on the above analysis, the undersigned finds that it is reasonable to compensate Petitioner and his counsel as follows:

Attorneys' Fees Requested	\$103,064.40
(Reduction to Fees)	- (\$2,500.00)
Total Attorneys' Fees Awarded	\$100,564.40
Attorneys' Costs Requested	\$16,159.13
(Reduction of Costs)	-
Total Attorneys' Costs Awarded	\$16,159.13
Total Attorneys' Fees and Costs	\$116,723.53
Petitioner's Costs	\$2,914.95
Total Amount Awarded	\$119,638.48

Accordingly, the undersigned awards the following:

- 1) a lump sum in the amount of \$116,723.53, representing reimbursement for Petitioner's attorneys' fees and costs, in the form of a check payable to Petitioner and Petitioner's counsel, Ms. Lisa Roquemore; and
- 2) a lump sum in the amount of \$2,914.95, representing reimbursement for Petitioner's costs, in the form of a check payable to Petitioner.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.⁵

IT IS SO ORDERED.

s/Herbrina D. Sanders
Herbrina D. Sanders
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.