

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-964V

Filed: March 21, 2017

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BARBARA SEASE,

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Petitioner,

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v.

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SECRETARY OF HEALTH

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AND HUMAN SERVICES,

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Respondent.

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Special Master Sanders

Attorneys' Fees and Costs;

Reasonable Amount Requested.

Charles W. Marsar, R.J. Marzella & Associates, P.C., Harrisburg, PA, for Petitioner.

Darryl R. Wishard, United States Department of Justice, Washington, DC, for Respondent.

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

On August 9, 2016, Barbara Sease ("Petitioner") petitioned for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (2012).<sup>2</sup> Petitioner alleged that the administration of influenza vaccines on December 11, 2013 and January 8, 2015 caused her to suffer from optic neuritis. Petition at Preamble, filed Aug. 9, 2016. On February 8, 2017, the undersigned issued a decision awarding compensation to Petitioner pursuant to the parties' joint stipulation.

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<sup>1</sup> This decision shall be posted 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), a party has 14 days to identify and move to delete medical or other information that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, the undersigned agrees that the identified material fits within the requirements of that provision, such material will be deleted from public access.

<sup>2</sup> The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (2012) (hereinafter "Vaccine Act" or "the Act"). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

On March 10, 2017, Petitioner filed an application for attorneys' fees and costs. Petitioner requested attorneys' fees in the amount of \$19,085.00. *See* Petitioner's Application at 2, filed Mar. 10, 2017. Petitioner requested attorneys' costs in the amount of \$1,349.85. *Id.* Respondent indicated that "[t]o the extent the Special Master is treating [P]etitioner's request for attorneys' fees and costs as a motion that requires a response from [R]espondent, [R]espondent . . . is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." Respondent's Response at 2, filed Mar. 10, 2017. Respondent recommended that the undersigned exercise her discretion and determine a reasonable award for attorneys' fees and costs. *Id.* at 3. Petitioner did not file a reply thereafter.

The undersigned has reviewed Petitioner's counsel's detailed records of time and expenses incurred in this case, and they are reasonable. In accordance with the Vaccine Act, 42 U.S.C. § 300aa-15(e) (2012), the undersigned finds that Petitioner is entitled to attorneys' fees and costs. **Accordingly, the undersigned hereby awards the amount of \$20,434.85,<sup>3</sup> in the form of a check made payable jointly to Petitioner and Petitioner's counsel, Charles Marsar, of R.J. Marzella & Associates, P.C.** 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/Herbrina D. Sanders  
Herbrina D. Sanders  
Special Master

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<sup>3</sup> 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).

<sup>4</sup> Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. Vaccine Rule 11(a).