

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: March 19, 2021

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ROSA M. RIOS MORALES *and*
JUAN ENRIQUE LOZADA VIRELLA
Parents on Behalf of Minor Daughter,
I.K.L.R.,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

No. 18-1190V

Special Master Gowen

Attorneys' Fees and Costs;
Varicella; Chronic Urticaria;
Stipulation.

Roberto Ruiz-Comas, RC Legal & Litigation Services PSC, San Juan, Puerto Rico, for petitioner.
Ryan D. Pyles, U.S. Department of Justice, Washington, D.C., for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

On December 23, 2020, Rosa M. Rios Morales and Juan Enrique Lozada Virella, parents of I.K.L.R., ("petitioners") filed a motion for final attorneys' fees and costs ("Fees App.") (ECF No. 31). For the reasons discussed below, I **GRANT** petitioners' motion and find that a reasonable final award of attorneys' fees and costs is \$38,281.50.

I. Procedural History

On August 10, 2018, petitioners filed a timely petition for compensation within the National Vaccine Injury Compensation Program.² Petitioners allege that as a result of I.K.L.R.

¹ Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), because this decision contains a reasoned explanation for the action in this case, I am required to post it on the website of the United States Court of Federal Claims. The court's website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. **This means the decision will be available to anyone with access to the Internet.** Before the decision is posted on the court's website, each party has 14 days to file a motion requesting 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). "An objecting party must provide the court with a proposed redacted version of the decision." *Id.* **If neither party files a motion for redaction within 14 days, the decision will be posted on the court's website without any changes.** *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. §§ 300aa-1 to -34 (2012)

receiving the varicella vaccine on August 14, 2015, she developed chronic urticaria. Petition (ECF No. 1). Petitioners also filed medical records to support the petition. (ECF No. 15). On March 21, 2019, respondent filed a status report stating that he was amenable to entertaining settlement negotiations in this case. Respondent (“Resp.”) Status Report (ECF No. 18). On July 1, 2020, respondent filed a stipulation for award. Stipulation (ECF No. 26). A decision awarding petitioners’ compensation was filed the same day. Decision (ECF No. 27).

Petitioners filed the instant motion, requesting a total of \$38,281.50 for attorneys’ fees and costs to be awarded to their attorneys. Fees App. at 6. This amount represents \$33,657.00 in attorneys’ fees and \$4,594.00 in attorneys’ costs. *Id.* at 2-3. Petitioners included a signed statement that they have not paid any costs incurred as a result of the prosecution of the petition, in accordance with General Order #9. Fees App. at 2; Petitioner Statement (ECF No. 25). Respondent filed a response on December 23, 2020. Resp. Response (ECF No. 32). Respondent deferred to the Court regarding whether petitioners’ attorneys fees request is reasonable. Resp. Response at 3. Petitioner filed a reply on February 20, 2021. Pet. Reply (ECF No. 33). This matter is now ripe for adjudication.

II. Legal Standard

The Vaccine Act provides that in the event that a petition results in compensation, the special master “shall” also award reasonable attorneys’ fees and costs incurred in any proceeding on such petition. 42 U.S.C. § 300aa-15(e)(1). Since the petition for compensation was successful, petitioner is entitled to *reasonable* attorneys’ fees and costs. *See* § 15(e)(1) (emphasis added). Reasonable attorneys’ fees and costs in Vaccine Act cases are determined using the lodestar approach, which begins with an assessment of a reasonable hourly rate multiplied by a reasonable number of hours expended in the case. *Avera v. HHS*, 515 F.3d 1343, 1347-48 (Fed. Cir. 2008.)

Petitioner “bears the burden of establishing the hours expended” and the reasonableness of the requested fee award. *Wasson*, 24 Cl. Ct. at 484. Notwithstanding respondent’s failure to raise any specific objections to petitioner’s fee application, “the Special Master . . . [is] not limited to endorsing or rejecting respondent’s critique.” *Duncan v. HHS*, No. 99-455V, 2008 WL 4743493 (Fed. Cl. 2008). Furthermore, “the Special Master [has] no additional obligation to warn petitioners that [she] might go beyond the particularized list of respondent’s challenges.” *Id.*

III. Analysis

a. Attorneys’ Fees

Petitioners’ request the following rates for the work of their counsel, Mr. Roberto Ruiz Comas, \$350.00 per hour for work performed in 2018, \$360.00 per hour for work performed in 2019, and \$370.00 per hour for work performed in 2020. Fees App. at 2. Additionally, petitioners request that Ms. Marisol Morell, an attorney that also performed work on their case,

(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.

be compensated at a rate of \$250.00 per hour for work performed in 2018, \$260.00 per hour for work performed in 2019, and \$270.00 per hour for work performed in 2020. *Id.* These rates are consistent with the Office of Special Master's Forum Rate Schedule and consistent with what counsel have been awarded for their Vaccine Program work, and I find them to be reasonable herein.

Turning next to review of the submitted billing statement, I find that the overall hours spend on this matter appear to be reasonable. The entries are reasonable and accurately describe the work being performed and the length of time it took to perform each task. Respondent also has not identified any particular entries as being objectionable. Therefore, petitioner is entitled to final attorneys' fees of \$33,657.50.

b. Attorneys' Costs

Like attorneys' fees, a request for reimbursement of costs must be reasonable. *Perreira v. Sec'y of Health & Human Servs.*, 27 Fed. Cl. 29, 34 (Fed. Cl. 1992). Petitioner requests total attorneys' costs in the amount of \$4,594.00. This amount is comprised of acquiring medical records, the Court's filing fee, services of process for subpoenas and an expert report by Dr. Christina Ramos. Fees App. Exs. 1-3. Petitioners have provided adequate supporting documentation for all the costs, and they appear to be reasonable upon review. Accordingly, petitioner is awarded the full amount of attorneys' costs sought.

IV. Conclusion

In accordance with the foregoing, I find that petitioners are entitled to a reimbursement of attorneys' fees and costs as follows:

Attorneys' Fees Requested	\$33,657.50
(Reduction of Fees)	--
Total Attorneys' Fees Awarded	\$33,657.50
 Attorneys' Costs Requested	 \$4,594.00
(Reduction of Costs)	--
Total Attorneys' Costs Awarded	\$4,594.00
 Total Attorneys' Fees and Costs	 \$38,281.50

Accordingly, I award a lump sum in the amount of \$38,281.50, representing reimbursement for petitioners' attorneys' fees and costs, in the form of a check payable to petitioners and INTOVACC LLC.

IT IS SO ORDERED.

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