

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

No. 11-177V

Filed: December 27, 2013

(Not for publication)

DINA VEGA and JOSE LUIS PEREZ,
Legal representatives of a minor child,
ANGEL PEREZ VEGA,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Attorney Fees and Cost;
Dismissal; Untimely filing

Martin James Martinez, Esq., Martinez Law Firm, Napa, CA for petitioners.
Vincent James Matanoski, Esq., U.S. Dept. of Justice, Washington, D.C. for
respondent.

DECISION ON ATTORNEY FEES AND COSTS¹

Vowell, Chief Special Master:

In this case under the National Vaccine Injury Compensation Program,² then Chief Special Master Campbell-Smith issued a decision dismissing the petition as untimely filed on April 18, 2012. On June 1, 2012, judgment entered. The judgment included the note that, "As to attorneys' fees and costs, within 180 days of this judgment, see Vaccine Rule 13."

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). 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 42 U.S.C. § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² The applicable statutory provisions defining the program are found at 42 U.S.C. § 300aa-10 *et seq.* (2006).

Petitioners were ordered to file by August 9, 2012, a status report detailing whether any application for fees and cost was forwarded to respondent, the status of any informal discussions, and whether the court could be of any assistance to the parties in resolving the fees and costs issues. Order, July 10, 2012. The order filed July 10, 2012, included a reminder to petitioners that, “any request for attorneys’ fees and costs must be filed no later than 180 days after the entry of judgment...” *Id.* Petitioners were, “**hereby put on notice that failure to file the application within this 180 day period will result in no award for fees and costs in this matter.**” *Id.* (emphasis in original). Petitioners failed to respond to this order.

On December 13, 2013, petitioners filed a motion for attorney fees requesting \$400.00 be granted to counsel for the filing fee for \$350.00 and \$50.00 for an estimated postal fee for the delivery of the clients['] physical file. Petitioners’ Motion for Attorney Fees, filed Dec. 13, 2013. This case was assigned to me on December 18, 2013. On December 20, 2013, respondent filed her response to petitioners’ motion laying out respondent’s objection to the request. Respondent’s Response [Response], filed Dec. 20, 2013. Respondent noted that petitioners’ attorney did not file a status report by August, 9, 2012, nor did petitioners’ counsel contact respondent. Response at 2. Respondent also noted that petitioners’ counsel did not file a motion for attorney fees and costs by December 2012. *Id.* Rather, petitioners’ counsel filed a motion over 17 months after then Chief Special Master Campbell-Smith’s July 10, 2012 Order (which put petitioners on notice that failure to meet the specified deadlines would result in no award for fees and costs) and a year after the filing deadline had lapsed. *Id.*

Vaccine Rule 13(a) provides that, “any request for attorney’s fees and costs pursuant to 42 U.S.C. § 300aa-15(e) must be filed no later than 180 days after the entry of judgment or the filing of an order concluding proceedings under Vaccine Rule 10(d)(3) or 29.” RCFC, App. B, Vaccine Rule 13. Judgment entered in this matter on June 1, 2012. Any request for fees and cost were due by the end of November 2012. Petitioners’ request filed December 13, 2013, more than a year after the deadline, was untimely. **Petitioners’ motion for attorney’s fees and costs is denied as untimely filed.**

The clerk of the court shall enter judgment in accordance herewith.³

IT IS SO ORDERED.

s/ Denise K. Vowell
Denise K. Vowell
Chief Special Master

³ Entry of judgment can be expedited by each party’s filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).