

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

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SHERRY LERWICK,
legal representative of a minor child,
B.L.,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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* No. 06-847V
* Special Master Christian J. Moran
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* Filed: March 31, 2015
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* Attorneys' fees and costs; award
* in the amount to which
* respondent does not object.
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Curtis R. Webb, Twin Falls, ID, for petitioner;
Darryl R. Wishard, United States Dep't of Justice, Washington, DC, for
respondent.

UNPUBLISHED DECISION ON FEES AND COSTS¹

On March 24, 2015, petitioner filed a stipulation of fact concerning final attorneys' fees and costs in the above-captioned matter. Previously, petitioner informally submitted a draft application for attorneys' fees and costs to respondent for review. Upon review of petitioner's application, respondent raised objections to certain items. Based on subsequent discussions, petitioner amended her application to request \$94,000.00, an amount to which respondent does not object. The Court awards this amount.

On December 12, 2006, Sherry Lerwick filed a petition for compensation on behalf of her minor son, B.L, alleging that the diphtheria, tetanus, acellular

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

pertussis (DTaP) vaccine that B.L. received on August 3, 2004, caused him to suffer acute disseminated encephalomyelitis, also known as ADEM. Ms. Lerwick was found entitled to compensation and was later awarded damages. See Entitlement Ruling, 2011 WL 4537874 (Fed. Cl. Spec. Mstr. Sept. 8, 2011), Decision Awarding Interim Compensation, 2014 WL 1897656 (Fed. Cl. Spec. Mstr. Apr. 16, 2014), Ruling Regarding Compensation, 2014 WL 3720309 (Fed. Cl. Spec. Mstr. June 30, 2014), Decision Awarding Damages, 2014 WL 4403044 (Fed. Cl. Spec. Mstr. Aug. 15, 2014), mot. for rev. denied, 2015 WL 682405 (Fed. Cl. Jan. 30, 2015). Because petitioner was found to be entitled to compensation, she is entitled to an award of attorneys' fees and costs. 42 U.S.C. § 300aa-15(e).

Ms. Lerwick was previously awarded interim attorneys' fees and costs in the total amount of \$300,000.00. See Decisions, issued May 26, 2010 and Jan. 23, 2014. Ms. Lerwick's pending application begins after her most recent application for interim fees ended. Activities performed during this timeframe include the preparation of a post-hearing reply brief following a September 2013 damages hearing, the preparation of a reply to her motion for interim compensation, the preparation of a response to a motion for reconsideration of the decision awarding compensation on an interim basis, as well as the preparation and oral argument of petitioner's motion for review of the undersigned's August 15, 2014 decision awarding damages on proffer. In addition, petitioner retained a separate attorney to assist with probate matters in California.

After negotiations, petitioner seeks a total of **\$69,406.00**, in final attorneys' fees and costs for her counsel. Additionally, in compliance with General Order No. 9, petitioner states that she incurred **\$24,594.00**, in out-of-pocket litigation expenses while pursuing this claim. This sum represents the amount of the bond the probate court required when it appointed Ms. Lerwick the guardian of B.L.'s estate. Respondent has no objection to the amount requested for attorneys' fees and costs.

After reviewing the request, the Court awards the following:

- a. A lump sum of \$69,406.00, in the form of a check made payable to petitioner, Sherry Lerwick, and petitioner's attorney, Curtis R. Webb, Esq., for attorneys' fees and other litigation costs available under 42 U.S.C. § 300aa-15(e).**

- b. A lump sum of \$24,594.00, payable to petitioner, Sherry Lerwick, for costs she incurred in pursuit of her petition.**

The Court thanks the parties for their cooperative efforts in resolving this matter. The Clerk shall enter judgment accordingly.²

Any questions may be directed to my law clerk, Mary Holmes, at (202) 357-6360.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.