

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-1081V

Filed: May 30, 2017

UNPUBLISHED

DONALD WEISS,

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Petitioner,

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v.

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Attorneys' Fees and Costs;

SECRETARY OF HEALTH

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Special Processing Unit ("SPU")

AND HUMAN SERVICES,

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Respondent.

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Michael D. Bell, Gallon, Takacs, Boissoneault & Schaffer Co., LPA, Toledo, OH, for petitioner.

Michael P. Milmoie, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

Dorsey, Chief Special Master:

On November 6, 2014, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act"). Petitioner alleged that he suffered injuries, described as Guillain-Barré Syndrome ("GBS"), caused-in-fact by the influenza vaccine he received on November 3, 2012. Petition at 1, ¶¶ 2, 11. On October 21, 2016, the undersigned issued a decision awarding compensation to petitioner based on the parties' stipulation. (ECF No. 48).

On May 9, 2017, petitioner filed a motion for attorneys' fees and costs. (ECF No. 52). Petitioner requests attorneys' fees in the amount of \$7,650.00 and attorneys' costs

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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). 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.

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).

in the amount of \$587.76 for a total amount of \$8,237.76. See Petitioner's Counsel's Affidavit and Itemized Attorneys' Fees and Costs, filed as an Attachment to Petitioner's Motion at 6 (ECF No. 52-1). The amount requested for attorneys' fees is based upon an hourly rate of \$275 for work performed by petitioner's counsel, Michael Bell, in 2013-17 and an hourly rate of \$100 for paralegal work performed in 2013-17. *Id.* at ¶¶ 4, 8. In accordance with General Order #9, petitioner's counsel represents that petitioner incurred no out-of-pocket expenses. See Statement Regarding General Order #9, filed May 30, 2017 (ECF No. 54). On May 25, 2017, respondent filed a response. (ECF No. 53).

In her response, respondent argues that "[n]either the Vaccine Act nor Vaccine Rule 13 contemplates any role for respondent in the resolution of a request by a petitioner for an award of attorneys' fees and costs." *Id.* at 1. Respondent adds, however, that she "is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." *Id.* at 2. Petitioner "respectfully recommends that the Chief Special Master exercise her discretion and determine a reasonable award for attorneys' fees and costs." *Id.* at 3.

The undersigned has reviewed the billing records submitted with petitioner's request. In the undersigned's experience, the request appears reasonable, and the undersigned finds no cause to reduce the requested hours or rates.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Based on the reasonableness of petitioner's request, the undersigned **GRANTS** petitioner's motion for attorneys' fees and costs.

Accordingly, the undersigned awards the total of \$8,237.76³ as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel Michael Bell.

The clerk of the court shall enter judgment in accordance herewith.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ 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).

⁴ 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.