

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-0526V

Filed: August 3, 2017

***** UNPUBLISHED
LEE LIGGETT, *
*
Petitioner, * Attorneys' Fees and Costs;
v. * Reasonable Hourly Rate.
*
SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
*
Respondent. *
*

*Danielle A. Strait, Maglio Christopher and Toale, PA, Washington, DC, for petitioner.
Althea W. Davis, U.S. Department of Justice, Washington, DC, for respondent.*

DECISION AWARDING ATTORNEYS' FEES AND COSTS¹

Dorsey, Chief Special Master:

On May 12, 2017, Lee Liggett ("petitioner") filed a motion for attorneys' fees and costs, requesting \$15,206.90 in attorneys' fees for his counsel, Danielle Strait of Maglio, Christopher & Toale, P.A., and \$754.31 in attorneys' costs, for a total of \$15,961.21. Petitioner's Application dated May 12, 2017 (ECF No. 42) at 1. Petitioner did not incur any costs related to the litigation. *Id.* Respondent filed a response on May 23, 2017, recommending that the undersigned exercise her discretion in determining a reasonable amount of attorneys' fees and costs. Petitioner filed a reply on May 24, 2017, but additional costs were not requested.

For the reasons discussed below, the undersigned GRANTS petitioner's motion for fees and costs and awards a total of \$15,823.51.

I. Introduction

On May 22, 2015, Lee Liggett ("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 alleges that he suffered Guillain-Barré Syndrome

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

(“GBS”) as a result of receiving the influenza (“flu”) vaccine on November 13, 2012.³ Pet. at 1; Stip., filed Dec. 16, 2016, at ¶¶ 1, 2, 4. On December 16, 2016, the undersigned issued a decision awarding compensation to petitioner based on the parties’ stipulation. Petitioner was awarded a total of \$180,000.00. Decision dated Dec. 16, 2016 (ECF No. 36) at 2.

II. Reasonable Attorneys’ Fees

Under the Vaccine Act, the special master shall award reasonable attorneys’ fees and costs for any petition that results in an award of compensation. 42 U.S.C. §300aa-15(e)(1). In this case, petitioner was awarded compensation and therefore is entitled to an award of reasonable attorneys’ fees and costs.

a. Reasonable Hourly Rates

Ms. Strait requests \$295.00 per hour for work performed in 2015, \$306.00 per hour for work performed in 2016, and \$320.00 per hour for work performed in 2017. Pet. App. at 14. In 2017, Ms. Strait is in her seventh year of practice, placing her within the 4-7 year practice range set forth in the 2015-2016 and 2017 Fee Schedules.⁴ However, Ms. Strait’s requested rates for 2016 and 2017 are outside of the range set forth in the fee schedules for an attorney with her years of experience. The maximum amount to be awarded for an attorney in the 4-7 year range is \$300.00 per hour in 2016 and \$307.00 per hour in 2017. Thus, the undersigned awards Ms. Strait \$300.00 per hour for work performed in 2016 and \$307.00 per hour for work performed in 2017, thereby reducing her application by \$137.70.

The remainder of the firm’s requested hourly rates, including rates for paralegals and law clerks, fall within the 2015-2016 and 2017 Fee Schedules, and the undersigned finds them reasonable and awards them in full.

The undersigned has reviewed the billing records submitted with petitioner’s request. In the undersigned’s experience, the request appears reasonable, and the undersigned will not further reduce the requested hours.

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).

³ Petitioner also received a Zostavax vaccine, which is not covered under the Vaccine Program.

⁴ The 2015-2016 Fee Schedule can be accessed at: <http://www.cofc.uscourts.gov/sites/default/files/Attorneys-Forum-Rate-Fee-Schedule2015-2016.pdf>. The 2017 Fee Schedule can be accessed at: <http://www.cofc.uscourts.gov/sites/default/files/Attorneys-Forum-Rate-Fee-Schedule-2017.pdf>. The hourly rates contained within are from the decision McCulloch v. Sec’y of Health & Human Servs., No. 09-093V, 2015 WL 5634323 (Fed. Cl. Spec. Mstr. Sept. 1, 2015).

III. Reasonable 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's counsel requests \$754.31 in attorneys' costs for expenses incurred by the firm. Pet. App. at 2, Ex. 10 at 1. Counsel requests reimbursement for costs related to collecting and copying medical records, paying the filing fee, and postage. Id. The undersigned finds these costs reasonable and awards them in full.

IV. Conclusion

Attorneys' Fees

Requested:	\$15,206.90
Ms. Strait rate reduction:	(\$137.70)
Awarded:	\$15,069.20

Attorneys' Costs

Requested:	\$754.31
Reductions:	(\$0.00)
Awarded:	\$754.31

<u>Total Fees and Costs:</u>	\$15,823.51
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Accordingly, the undersigned awards:

A lump sum in the amount of \$15,823.51, representing reimbursement for petitioner's attorneys' fees and costs, in the form of a check payable to petitioner and his attorney, Ms. Danielle Strait.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.⁵

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master

⁵ 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.