

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: April 14, 2025

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DUANE MORGAN,	*	
	*	
Petitioner,	*	No. 16-269V
	*	
v.	*	Special Master Gowen
	*	
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

* * * * *

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for Petitioner.
Ryan Daniel Pyles, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

On September 13, 2024, Duane Morgan, (“petitioner”) filed a motion for attorneys’ fees and costs. Petitioner’s Motion for Attorney Fees (“Fees App.”) (ECF No. 121). For the reasons discussed below, I **GRANT** Petitioner’s motion for attorneys’ fees and costs and award a total of **\$100,592.46**.

I. Procedural History

On February 26, 2016, Duane Morgan (“petitioner”) filed a petition for compensation in the National Vaccine Injury Compensation Program.² Petition (ECF No. 1). Petitioner alleged that as a result of receiving the influenza (“flu”) vaccine on October 22, 2014, he suffered from adhesive capsulitis and brachial neuritis. Amended Petition (ECF No. 26). Following briefing by both parties, on July 12, 2024, I issued a decision awarding damages. (ECF No. 117).

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). This means the Decision will be available to anyone with access to the internet. 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, I agree that the identified material fits within this definition, I will redact such material from public access.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to -34 (2018) (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.

On September 13, 2024, petitioner filed a motion for attorneys' fees and costs. Petitioner requests compensation in the total amount of \$100,592.46, representing \$78,157.90 in attorneys' fees and \$22,434.56 in costs. Fees App. at 2. Pursuant to General Order No. 9, petitioner warrants he has not personally incurred any costs in pursuit of his claim. *Id.* at 2. Respondent reacted to the fees motion on September 13, 2024, stating that "Respondent is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." Response at 2 (ECF No. 122). Petitioner did not file a reply.

The matter is now ripe for adjudication.

II. Analysis

Under the Vaccine Act, the special master may award reasonable attorneys' fees and costs for a petition that does not result in an award of compensation but was filed in good faith and supported by a reasonable basis. § 300aa-15(e)(1). Here, because Petitioner was awarded compensation pursuant to a damages decision, he is entitled to an award of reasonable attorneys' fees and costs.

Petitioners "bea[r] the burden of establishing the hours expended, the rates charged, and the expenses incurred" are reasonable. *Wasson v. Sec'y of Health & Human Servs.*, 24 Cl. Ct. 482, 484 (1993). Adequate proof of the claimed fees and costs should be presented when the motion is filed. *Id.* at 484 n. 1. The special master has the discretion to reduce awards *sua sponte*, independent of enumerated objections from the respondent. *Sabella v. Sec'y of Health & Human Servs.*, 86 Fed. Cl. 201, 208-09 (Fed. Cl. 2009); *Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313 (Fed. Cl. 2008), *aff'd* No. 99-537V, 2008 WL 2066611 (Fed. Cl. Spec. Mstr. Apr. 22, 2008).

a. Attorneys' Fees

Petitioner requests the following hourly rates for the work of his counsel at Muller Brazil: for Mr. Paul Brazil, \$275.00 per hour for work performed in 2016, \$300.00 per hour for work performed in 2017, \$317.00 per hour for work performed in 2018, \$325.00 per hour for work performed in 2019, \$350.00 per hour for work performed in 2020, \$375.00 per hour for work performed in 2021, \$400.00 per hour for work performed in 2022, \$425.00 per hour for work performed in 2023; and \$450.00 per hour for work performed in 2024; for Mr. Max Muller, \$375.00 per hour for work performed in 2021; and for Ms. Leigh Finfer, \$200.00 per hour for work performed in 2020. These rates are consistent with what counsel have previously been awarded for their Vaccine Program work and the undersigned finds them to be reasonable herein.

Turning next to review of the submitted billing statement, I find that the overall hours spent 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 has not identified any particular entries as being objectionable. Therefore, Petitioner is entitled to final attorneys' fees of \$78,157.90.

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 \$22,434.56. This amount is comprised of acquiring medical records, postage, the Court's filing fee, and expert services provided by Vera S. Byers, MD, George Russell Huffman, MD, and Maria Chen, MD, PhD. Fees App. Ex. B. Dr. Byers billed for 35 hours at \$400.00 per hour totaling \$14,000.00. This rate is consistent with what Dr. Byers has been previously awarded, and her billing records appear reasonable. Dr. Huffman billed a flat rate of \$2,500.00 for his expert report. Fees App. Ex. B at 6. Dr. Chen also billed a flat rate of \$2,500.00 for her expert report and \$2,500.00 for her supplemental report totaling \$5,000.00. *Id.* at 11-12. Neither Dr. Huffman, nor Dr. Chen included the number of hours expended or the rate charged. However, I find that the amounts billed by these experts, respectively, is reasonable based on the work produced. For future, counsel is reminded that supporting documentation for any expert must be included within a request for costs.

Petitioner has provided adequate documentation supporting the remainder of the costs. Petitioner is therefore awarded the full amount of costs sought.

III. Conclusion

In accordance with the foregoing, I hereby **GRANT** Petitioner's motion for attorneys' fees and costs and find that Petitioner is entitled to a reimbursement of attorneys' fees and costs as follows:

Attorneys' Fees Requested	\$78,157.90
(Reduction of Fees)	-
Total Attorneys' Fees Awarded	\$78,157.90
Attorneys' Costs Requested	\$22,434.56
(Reduction of Costs)	-
Total Attorneys' Costs Awarded	\$22,434.56
Total Attorneys' Fees and Costs	\$100,592.46

Accordingly, I award a lump sum in the amount of \$100,592.46 representing reimbursement for Petitioner's attorneys' fees and costs, to be paid through an ACH deposit to Petitioner's counsel's IOLTA account for prompt disbursement.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court **SHALL ENTER JUDGMENT** in accordance herewith.³

IT IS SO ORDERED.

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

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