

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-381V

Filed: June 21, 2016

UNPUBLISHED

REBECCA KEMAK,

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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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Andrew Downing, Van Cott & Talamante, PLLC, Phoenix, AZ, for petitioner.

Ryan Pyles, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

Dorsey, Chief Special Master:

On March 24, 2016, Rebecca Kemak ("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" or "Program"). Petitioner "request[ed] compensation . . . due to a severe adverse reaction after receiving an influenza vaccination on September 11, 2015." Petition at 1. Petitioner alleged she suffered a shoulder injury following her vaccination. *Id.* at ¶ 4. On June 21, 2016, the undersigned issued a decision awarding compensation to petitioner based on respondent's proffer to which petitioner agreed. ECF No. 15.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

On June 21, 2016, petitioner filed an unopposed motion³ for attorneys' fees and costs. ECF No. 17. Petitioner requests attorneys' fees in the amount of \$6,035.00 and attorneys' costs in the amount of \$855.66 for a total amount of \$6,890.66. *Id.* In accordance with General Order #9, petitioner's counsel represents that petitioner incurred no out-of-pocket expenses. *Id.* at ¶ 3.

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

Accordingly, the undersigned awards the total of \$6,890.66⁴ as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel Andrew Downing.

The clerk of the court shall enter judgment in accordance herewith.⁵

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master

³ The motion was filed as an unopposed motion and specifically states that respondent has no objection. Petitioner's Unopposed Motion at ¶ 2.

⁴ 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).

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.