

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-0888V

Filed: July 21, 2017

UNPUBLISHED

NANCY DAY,

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Petitioner,

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Chief Special Master Dorsey

v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Attorneys' Fees and Costs;

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Law Clerk Reduction.

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Respondent.

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Michael G. McLaren, Black, McLaren, et al., Memphis, TN, for petitioner.

Glenn A. MacLeod, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING ATTORNEYS' FEES AND COSTS¹

Dorsey, Chief Special Master:

On May 11, 2017, Nancy Day ("petitioner") filed a motion for attorneys' fees and costs, requesting \$22,777.00 in attorneys' fees for her counsel, Michael G. McLaren of Black McLaren Jones Ryland & Griffie ("the McLaren Firm"), and \$2,663.76 in attorneys' costs, for a total of \$25,440.76. Petitioner's Application ("Pet. App.") dated May 11, 2017 (ECF No. 34) at 1. Respondent did not file a response. For the reasons discussed below, the undersigned GRANTS petitioner's motion for attorneys' fees and costs and award a total of \$25,305.66.

I. Introduction

On July 26, 2016, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine

¹ Because this 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).

Act” or “Program”). Petitioner alleges that she suffered a left shoulder injury as a result of an influenza (“flu”) vaccination she received on October 1, 2015. Pet. at 1. The case was assigned to the Special Processing Unit (“SPU”) of the Office of Special Masters.

On November 17, 2016, respondent filed a Rule 4(c) Report in which he conceded that petitioner was entitled to compensation. Rule 4(c) Rep. at 1. The undersigned issued a Ruling on Entitlement on November 18, 2016, after which the case entered the damages phase. On March 27, 2017, the undersigned issued a decision based on respondent’s proffer awarding petitioner \$130,000.00. Decision dated March 27, 2017 (ECF No. 29).

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 Rate

On November 4, 2016, the undersigned issued a reasoned decision in Henry v. Sec’y of Health & Human Servs., 15-545V, 2016 WL 7189925 (Fed. Cl. Spec. Mstr. Nov. 4, 2016), finding the McLaren Firm entitled to forum rates and setting hourly rates for the firm consistent with those set forth in McCulloch v. Sec’y of Health & Human Servs., No. 09-093V, 2015 WL 5634323 (Fed. Cl. Spec. Mstr. Sept. 1, 2015).

Mr. McLaren requests \$425.00 per hour for work performed in 2016 and \$440.00 per hour for work performed in 2017. These rates have been previously awarded to Mr. McLaren and fall within the ranges included in the fee schedule³ for attorneys’ with his level of experience. Henry, 2016 WL 7189925; Brown v. Sec’y of Health & Human Servs., 13-766V, 2016 WL 7666536 (Fed. Cl. Spec. Mstr. Dec. 15, 2016). Therefore, the undersigned awards Mr. McLaren these requested rates.

Mr. Chris Webb, an associate at the McLaren Firm, also billed time in this case at a rate of \$305.00 per hour in 2016 and \$315.00 per hour in 2017. These rates are in accordance with the McCulloch fee schedules and have been previously awarded to Mr. Webb, thus the undersigned awards them in full.

Paralegal time was billed at a rate of \$130.00 per hour for work performed in 2015, which is in accordance with the 2015-2016 fee schedule. The undersigned awards this requested rate in full.

³ 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).

Law Clerks also billed time in the case, at a rate of \$150.00 per hour in 2016 and \$155.00 per hour in 2017. According to the 2016 and 2017 fee schedules,⁴ law clerks and paralegals are entitled to \$125.00 - \$145.00 per hour in 2016 and \$128.00 to \$148.00 per hour in 2017. Therefore, the undersigned adjusts the hourly rates requested by the law clerks. The undersigned will compensate the law clerks at \$145.00 per hour for work performed in 2016 and \$148.00 per hour for work performed in 2017, thereby reducing petitioner's application by \$135.10.

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.

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 \$2,663.76 in attorneys' costs for expenses incurred by the firm. Pet. App. at 1. These costs include payments for copies of medical records, the filing fee, travel costs, and postage. Pet. App., Ex. 2 at 17. The undersigned finds these costs reasonable and awards them in full.

IV. Conclusion

Attorneys' Fees

Requested:	\$22,777.00
Law Clerk rate reduction:	(\$135.10)
Awarded:	\$22,641.90

Attorneys' Costs

Requested:	\$2,663.76
Reductions:	(\$0.00)
Awarded:	\$2,663.76

Total Fees and Costs

Total:	\$25,305.66
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Accordingly, the undersigned awards:

A lump sum in the amount of \$25,305.66, representing reimbursement for petitioner's attorneys' fees and costs, in the form of a check payable to petitioner and her attorney, Michael G. McLaren.

⁴ See *infra*, note 3.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court **SHALL ENTER JUDGMENT** herewith.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 is expedited by the parties' joint filing of notice renouncing the right to seek review.