

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

Filed: May 28, 2020

* * * * *	UNPUBLISHED
ANDREA MORRIS,	*
	*
Petitioner,	*
	No. 17-165V
	Special Master Oler
v.	*
	Attorneys' Fees and Costs
SECRETARY OF HEALTH	*
AND HUMAN SERVICES,	*
	*
Respondent.	*
* * * * *	

Ronald C. Homer, Conway, Homer, P.C., Boston, MA, for Petitioner;
Alexis B. Babcock, United States Dep't of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

On September 1, 2017, Andrea Morris ("Petitioner") filed a petition for compensation pursuant to the National Vaccine Injury Compensation Program.² 42 U.S.C. §300aa-10 to -34 (2012). Petitioner alleged that she suffered gastroparesis as a result of the Hepatitis B vaccination she received on March 20, 2015. *See* Petition, ECF No. 1. On September 9, 2019, Petitioner filed a Motion to Dismiss, indicating that Petitioner has chosen not to move forward with her petition for compensation in the Vaccine Program. *See* Motion to Dismiss, ECF No. 50. The undersigned issued her Decision dismissing Petitioner's claim for insufficient proof on September 10, 2019. *See* Decision, ECF No. 51.

On February 24, 2020, Petitioner filed a motion for attorneys' fees and costs. ECF No. 55 ("Fees App."). Petitioner requests total attorneys' fee and costs in the amount of \$52,005.80,

¹ The undersigned intends to post this Ruling on the United States Court of Federal Claims' website. **This means the Ruling 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, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims'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).

² National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755.

representing \$29,761.60 in attorneys' fees and \$22,244.20 in attorneys' costs. Fees App. at 1-2. Pursuant to General Order No. 9, Petitioner has indicated that she has not personally incurred any costs in pursuit of this litigation. *Id.* at 2. Respondent responded to the motion on March 4, 2020, stating that "Respondent is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case" and requested that the Court "exercise its discretion and determine a reasonable award for attorneys' fees and costs." Resp't's Resp. at 2-3, ECF No. 57. Petitioner did not file a reply thereafter.

This matter is now ripe for consideration.

I. Reasonable Attorneys' Fees and Costs

Section 15(e) (1) of the Vaccine Act allows for the Special Master to award "reasonable attorneys' fees, and other costs." § 300aa-15(e)(1)(A)–(B). Petitioners are entitled to an award of reasonable attorneys' fees and costs if they are entitled to compensation under the Vaccine Act, or, even if they are unsuccessful, they are eligible so long as the Special Master finds that the petition was filed in good faith and with a reasonable basis. *Avera v. Sec'y of Health & Human Servs.*, 515 F.3d 1343, 1352 (Fed. Cir. 2008). Here, although Petitioner's claim was eventually dismissed, the undersigned finds that the petition was filed in good faith, and that there was a reasonable basis to file it. Respondent also has not challenged the good faith or reasonable basis. Accordingly, a final reasonable award of attorneys' fees and costs is appropriate in this case.

It is "well within the special master's discretion" to determine the reasonableness of fees. *Saxton v. Sec'y of Health & Human Servs.*, 3 F.3d 1517, 1521–22 (Fed. Cir. 1993); *see also Hines v. Sec'y of Health & Human Servs.*, 22 Cl. Ct. 750, 753 (1991). ("[T]he reviewing court must grant the special master wide latitude in determining the reasonableness of both attorneys' fees and costs."). Applications for attorneys' fees must include contemporaneous and specific billing records that indicate the work performed and the number of hours spent on said work. *See Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313, 316–18 (2008).

Reasonable hourly rates are determined by looking at the "prevailing market rate" in the relevant community. *See Blum v. Stenson*, 465 U.S. 886, 895 (1984). The "prevailing market rate" is akin to the rate "in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Id.* at 895, n.11. The petitioner bears the burden of providing adequate evidence to prove that the requested hourly rate is reasonable. *Id.*

a. Reasonable Hourly Rate

The undersigned has reviewed the hourly rates requested for the work of Petitioner's counsel at Conway, Homer, P.C. (the billing records indicate that the majority of attorney work was performed by Ms. Meredith Daniels, with supporting work done by Ms. Christina Ciampolillo, Ms. Lauren Faga, Mr. Ronald Homer, Mr. Joseph Pepper, and Mr. Patrick Kelly) and finds that the rates requested for their work are reasonable and consistent with what they have previously been awarded for their Vaccine Program work. Accordingly, no adjustment to the rates is necessary.

b. Reasonable Number of Hours

Attorneys' fees are awarded for the "number of hours reasonably expended on the litigation." *Avera*, 515 F.3d at 1348. Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton*, 3 F.3d at 1521 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). Additionally, it is well-established that billing for administrative/clerical tasks is not permitted in the Vaccine Program. *Rochester v. United States*, 18 Cl. Ct. 379, 387 (1989); *Arranga v. Sec'y of Health & Human Servs.*, No. 02-1616V, 2018 WL 2224959, at *3 (Fed. Cl. Spec. Mstr. Apr. 12, 2018).

Upon review, the undersigned finds the overall hours billed to be reasonable. Counsel has provided sufficiently detailed descriptions for the tasks performed, and, upon review, the undersigned does not find any of the billing entries to be unreasonable. Accordingly, Petitioner is entitled to final attorneys' fees in the amount of \$29,761.60.

c. Attorney Costs

Like attorneys' fees, a request for reimbursement of attorneys' costs must be reasonable. *Perreira v. Sec'y of Health & Human Servs.*, 27 Fed. Cl. 29, 34 (Fed. Cl. 1992). Petitioner requests a total of \$22,244.20 in attorneys' costs. This amount consists of acquiring medical records, postage, the Court's filing fee, and work performed by Petitioner's experts, Dr John Santoro and Dr. Richard Moriarty. Fees App. at 28-29.

Concerning the work of Dr. Santoro, the undersigned finds that a reduction is necessary. Dr. Santoro billed at an hourly rate of \$500.00. Fees App. at 52. Previously, the undersigned has considered Dr. Santoro's credentials and experience and found that a reasonable hourly rate is \$400.00 per hour. *B.E. by and through Evans v. Sec'y of Health & Human Servs.*, No. 15-1458V, 2019 WL 7556375, at *9 (Fed. Cl. Spec. Mstr. Nov. 13, 2019). In the instant case, Petitioner has not offered any rationale as to why the undersigned should deviate from her previous holding. Dr. Santoro's work in this case shall therefore be compensated at \$400.00 per hour.

The number of hours billed must also be reduced. As an initial matter, the undersigned notes that Dr. Santoro's billing records are problematically vague and block billed. For example, Dr. Santoro billed 10 hours for "Case Records Comprehensive Review" and 17 hours on "Literature Research and Review." Fees App. at 52. In sum, Dr. Santoro billed 37 hours to prepare his expert report, which is excessive in the undersigned's experience. The undersigned and other special masters have previously noted that Dr. Santoro's billed hours have been excessive. See *Evans*, 2019 WL 7556375, at *9; *Campbell v. Sec'y of Health & Human Servs.*, No. 16-996V, 2019 WL 5887031, at *4 (Fed. Cl. Spec. Mstr. Oct. 21, 2019). Based upon the facts of the case and Dr. Santoro's work product, the undersigned finds that a ten percent reduction to the hours billed is reasonable. Therefore, a reasonable amount for the work of Dr. Santoro is \$13,320.00.

Concerning the remaining costs, Petitioner has provided adequate documentation of all these expenses, and all are reasonable in the undersigned's experience. Accordingly, Petitioner is awarded final attorneys' costs of \$17,064.20.

II. Conclusion

In accordance with the Vaccine Act, 42 U.S.C. §15(e) (2012), the undersigned has reviewed the billing records and costs in this case and finds that Petitioner's request for fees and

costs, other than the reductions delineated above, is reasonable. Based on the above analysis, the undersigned finds that it is reasonable to compensate Petitioner and her counsel as follows:

Attorneys' Fees Requested	\$29,761.60
(Reduction to Fees)	-
Total Attorneys' Fees Awarded	\$29,761.60
Attorneys' Costs Requested	\$22,244.20
(Reduction of Costs)	- (\$5,180.00)
Total Attorneys' Costs Awarded	\$17,064.20
Total Amount Awarded	\$46,825.80

Accordingly, the undersigned awards a lump sum in the amount of \$46,825.80, representing reimbursement for reasonable attorneys' fees and costs, in the form of a check payable jointly to Petitioner and Petitioner's counsel of record, Mr. Ronald Homer.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.³

IT IS SO ORDERED.

s/ Katherine E. Oler
Katherine E. Oler
Special Master

³ 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.