

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-0139V

(not to be published)

LESLIE MINTZER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 6, 2020

Special Processing Unit (SPU);
Attorney's Fees and Costs

Robert Joel Krakow, New York, NY, for Petitioner.

Debra A. Filteau Begley, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On January 29, 2018, Leslie Mintzer 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 she suffered a shoulder injury related to vaccine administration ("SIRVA") due to an influenza ("flu") vaccine she received on October 17, 2016. (Petition at 1). On November 5, 2019, a decision was issued awarding compensation to Petitioner based on the parties' stipulation. (ECF No. 49).

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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). **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 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).

Petitioner has now filed a motion for attorney's fees and costs, dated February 11, 2020, (ECF No. 54), requesting a total award of \$26,986.41 (representing \$26,396.30 in fees and \$590.11 in costs). In accordance with General Order #9 Petitioner filed a signed statement indicating that she incurred no out-of-pocket expenses. (ECF No. 54-5.) Respondent reacted to the motion on March 3, 2020 indicating that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case and defers to the Court's discretion to determine the amount to be awarded. (ECF No. 55). That same day, Petitioner filed a reply stating Petitioner relies on arguments in her motion to support her request for attorney fees and costs. (ECF No. 56).

I have reviewed the billing records submitted with Petitioner's requests and find a reduction in the amount of fees to be awarded appropriate for the reason listed below.

ANALYSIS

The Vaccine Act permits an award of reasonable attorney's fees and costs. § 15(e). Counsel must submit fee requests that include contemporaneous and specific billing records indicating the service performed, the number of hours expended on the service, and the name of the person performing the service. *See Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313, 316-18 (2008). Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton v. Sec'y of Health & Human Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). It is "well within the special master's discretion to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done." *Id.* at 1522. Furthermore, the special master may reduce a fee request *sua sponte*, apart from objections raised by respondent and without providing a petitioner notice and opportunity to respond. *See Sabella v. Sec'y of Health & Human Servs.*, 86 Fed. Cl. 201, 209 (2009). A special master need not engage in a line-by-line analysis of petitioner's fee application when reducing fees. *Broekelschen v. Sec'y of Health & Human Servs.*, 102 Fed. Cl. 719, 729 (2011).

The petitioner "bears the burden of establishing the hours expended, the rates charged, and the expenses incurred." *Wasson v. Sec'y of Health & Human Servs.*, 24 Cl. Ct. at 482, 484 (1991). The Petitioner "should present adequate proof [of the attorney's fees and costs sought] at the time of the submission." *Id.* at 484 n.1. Petitioner's counsel "should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Hensley*, 461 U.S., at 434.

ATTORNEY FEES

A. Administrative Time

Upon review of the billing records submitted, it appears that a number of entries are for tasks considered clerical or administrative. In the Vaccine Program, secretarial work “should be considered as normal overhead office costs included within the attorney’s fee rates.” *Rochester v. U.S.*, 18 Cl. Ct. 379, 387 (1989); *Dingle v. Sec’y of Health & Human Servs.*, No. 08-579V, 2014 WL 630473, at *4 (Fed. Cl. Spec. Mstr. Jan. 24, 2014). “[B]illing for clerical and other secretarial work is not permitted in the Vaccine Program.” *Mostovoy*, 2016 WL 720969, at *5 (citing *Rochester*, 18 Cl. Ct. at 387). Mr. Krakow billed 3.35 hours on tasks considered administrative including, organizing documents, faxing and mailing documents. Examples of these entries include the following:

- September 5, 2017 (0.15hrs) “Paralegal_organize Rose records for file”
- January 19, 2018 (0.25hrs) “Organize exhibits and get overview of them”
- January 19, 2018 (0.25hrs) “Fax 2 letter to NYU Trinity for Cardone records”
- January 29, 2018 (0.20hrs) “Organize file documents and receipts”

ECF No. 54-2 at 1, 4 and 6.³

This results in a reduction of requested attorney fees in the amount of **\$618.40**.⁴

ATTORNEY COSTS

Petitioner requests \$590.11 in overall costs. (ECF No. 54 at 11). This amount is comprised of obtaining medical records, postage and the Court’s filing fee. I have reviewed all of the requested costs and find them to be reasonable and shall award the requested amount in full.

CONCLUSION

The Vaccine Act permits an award of reasonable attorney’s fees and costs. § 15(e). Accordingly, I hereby GRANT Petitioner’s Motion for attorney’s fees and costs. I award a total of **\$26,368.01** (representing \$25,777.90 in attorney’s fees and \$590.11 in costs) as a lump sum in the form of a check jointly payable to Petitioner and Petitioner’s

³ These are merely examples and not an exhaustive list.

⁴ This amount consists of (\$464 x 0.1 hrs = \$46.40) + (\$450 x 0.25 hrs = \$112.50) + (\$156 x 1 hr = \$156) + (\$150 x 0.95 hrs = \$142.50) + \$140 x 1.15 hrs = \$161 = \$618.40.

counsel. In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk shall enter judgment in accordance with this decision.⁵

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

⁵ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.