

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 19-752V

SAMUEL N. STOKES
as personal representative of
ESTATE OF SALLY STOKES,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 29, 2024

Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for Petitioner.

Darryl R. Wishard, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On May 21, 2019, Sally Stokes 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 alleged that she suffered a Table Injury – a Shoulder Injury Related to Vaccine Administration as a result of an influenza vaccine received on September 11, 2018. Petition, ECF No. 1. On December 17, 2021, I issued a decision awarding

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 National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

compensation to Petitioner following briefing by the parties and a Motions day hearing. ECF No. 55.

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$59,099.44 (representing \$47,706.70 in fees plus \$11,392.74 in costs). Petitioner's Application for Fees and Costs ("Motion") filed June 21, 2022, ECF No. 63. In accordance with General Order No. 9, Petitioner filed a signed statement representing that Petitioner incurred \$400.00 in out-of-pocket expenses. *Id.* at 2.

Respondent reacted to the motion on June 22, 2022, reporting that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case, but deferring resolution of the amount to be awarded to my discretion. Respondent's Response to Motion at 2-3, ECF No. 64. Petitioner filed a reply requesting an award of fees and costs as indicated in the Motion. ECF No. 65.

On January 5, 2024, Petitioner filed a status report withdrawing the request for reimbursement of \$9,750.00 in requested costs associated with Dr. Uma Srikumaran, M.D. See ECF No. 74. **In light of Petitioner's request, I hereby reduce the requested costs by \$9,750.00.** I have otherwise reviewed the billing records submitted with Petitioner's request and I find no further cause to reduce the requested hours or rates.

I note this case required additional briefing regarding the issue of damages. See Status Report, filed May 17, 2021, ECF No. 42 (reporting an impasse on resolving damages); Petitioner's Brief on Damages, filed Aug. 2, 2021, ECF No. 46; Petitioner's Reply to Respondent's Brief on Damages, filed Oct. 21, 2021, ECF No. 50. Petitioner's counsel expended approximately 15.30 hours drafting the brief on damages and 8.10 hours drafting the reply brief. Attachment to Motion at 7-10. Although on the higher end of time expended preparing a damage brief in a case involving a SIRVA injury,³ I find this amount of time to be reasonable and will award the fees requested.

³ The following fee decisions can be found on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc> (last visited Feb. 26, 2024): *Kestner v. Sec'y of Health & Hum. Servs.*, No. 20-0025V (June 22, 2023) (6.00 and 4.10 hours billed for drafting a damages brief and responsive damages brief, respectively); *Juno v. Sec'y of Health & Hum. Servs.*, No. 18-0643V (June 14, 2023) (5.8 hours billed for drafting a damages brief); *Deutsch v. Sec'y of Health & Hum. Servs.*, No. 18-0527V (June 12, 2023) (7.4 and 4.4 hours billed for drafting a damages brief and responsive damages brief, respectively); *Edminister v. Sec'y of Health & Hum. Servs.*, No. 19-0184V (May 30, 2023) (15.3 and 3.5 hours billed for drafting a damages brief and responsive damages brief, respectively); *Aponte v. Sec'y of Health & Hum. Servs.*, No. 20-1031V (May 18, 2023) (6.9 hours billed for drafting a damages brief); *Gray v. Sec'y of Health & Hum. Servs.*, No. 20-1708V (May 18, 2023) (5 hours billed for drafting a damages brief); *Merson v. Sec'y of Health & Hum. Servs.*, No. 18-0589V (May 18, 2023) (9.8 hours billed for drafting a damages brief); *Thomson v. Sec'y of Health & Hum. Servs.*, No. 22-0234V

CONCLUSION

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). Accordingly, I hereby GRANT Petitioner's Motion for attorney's fees and costs. **Petitioner is awarded the total amount of \$49,749.44⁴ as follows:**

- A lump sum of \$49,349.44 (representing \$47,706.70 in fees plus \$1,642.74 in costs), in the form of a check payable jointly to Petitioner and Petitioner's counsel and;
- A lump sum of \$400.00, representing reimbursement for Petitioner's costs, in the form of a check payable to Petitioner.

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

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran

Chief Special Master

(May 4, 2023) (9.5 and 2.5 hours billed for drafting a damages brief and responsive damages brief, respectively).

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), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.