

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: January 11, 2022

|                     |   |                           |
|---------------------|---|---------------------------|
| * * * * *           |   |                           |
| VIRGIL TOPHAM,      | * | UNPUBLISHED               |
|                     | * |                           |
| Petitioner,         | * | No. 19-1072V              |
|                     | * | Special Master Gowen      |
| v.                  | * |                           |
|                     | * | Attorneys' Fees and Costs |
| SECRETARY OF HEALTH | * |                           |
| AND HUMAN SERVICES, | * |                           |
|                     | * |                           |
| Respondent.         | * |                           |
| * * * * *           |   |                           |

*Leah V. Durant*, Law Offices of Leah V. Durant, PLLC, Washington, DC, for Petitioner.  
*Voris E. Johnson*, United States Department of Justice, Washington, DC, for Respondent.

### **DECISION ON ATTORNEYS' FEES AND COSTS<sup>1</sup>**

On October 12, 2021, Virgil Topham ("Petitioner") filed a motion for attorneys' fees and costs. Petitioner's Motion for Attorney Fees ("Fees App.") (ECF No. 34). For the reasons discussed below, I **GRANT** Petitioner's motion for attorneys' fees and costs and award a total of **\$41,808.59**.

#### **I. Procedural History**

On July 25, 2019, Petitioner filed a petition in the National Vaccine Injury Compensation Program.<sup>2</sup> Petitioner alleged that he suffered from Guillain-Barré syndrome and chronic inflammatory demyelinating polyneuropathy as a result of receiving an influenza vaccination on November 1, 2017. Petition at 1 (ECF No. 1). On April 13, 2021, the parties filed a stipulation,

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<sup>1</sup> I intend 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, I agree that the identified material fits within this definition, I will redact such material from public access. Because this unpublished ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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).

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) ("Vaccine Act" or "the Act"). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

which I adopted as my Decision awarding compensation on the same day. (ECF No. 29).

On October 12, 2021, Petitioner filed a motion for attorneys' fees and costs. Petitioner requests compensation for his attorney, Ms. Leah Durant, in the total amount of \$42,591.30, representing \$39,920.70 in attorneys' fees and \$2,670.60 in costs. Fees App. at 1. Pursuant to General Order No. 9, Petitioner warrants he has personally incurred costs in the amount of \$15.70 in pursuit of his claim. *Id.* at 2. Respondent reacted to the fees motion on October 15, 2021, stating that "Respondent is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." Response at 2 (ECF No. 35). Petitioner filed a reply on October 18, 2021, reiterating his belief that the requested amount of attorneys' fees and costs was reasonable. Reply at 1. (ECF No. 36).

The matter is now ripe for adjudication.

## II. Analysis

Under the Vaccine Act, the special master may award reasonable attorneys' fees and costs for a petition that does not result in an award of compensation but was filed in good faith and supported by a reasonable basis. § 300aa-15(e)(1). Here, because Petitioner was awarded compensation pursuant to a stipulation, he is entitled to an award of reasonable attorneys' fees and costs.

Petitioners "bea[r] the burden of establishing the hours expended, the rates charged, and the expenses incurred" are reasonable. *Wasson v. Sec'y of Health & Human Servs.*, 24 Cl. Ct. 482, 484 (1993). Adequate proof of the claimed fees and costs should be presented when the motion is filed. *Id.* at 484 n. 1. The special master has the discretion to reduce awards *sua sponte*, independent of enumerated objections from the respondent. *Sabella v. Sec'y of Health & Human Servs.*, 86 Fed. Cl. 201, 208-09 (Fed. Cl. 2009); *Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313 (Fed. Cl. 2008), *aff'd* No. 99-537V, 2008 WL 2066611 (Fed. Cl. Spec. Mstr. Apr. 22, 2008).

### a. Attorneys' Fees

In reducing an award of fees, the goal is to achieve rough justice, and therefore a special master may take into account their overall sense of a case and may use estimates when reducing an award. See *Florence v. Sec'y of Health & Human Servs.*, No. 15-255V, 2016 WL 6459592, at \*5 (Fed. Cl. Spec. Mstr. Oct. 6, 2016) (citing *Fox v. Vice*, 563 U.S. 826, 838 (2011)). It is well established that an application for fees and costs must sufficiently detail and explain the time billed so that a special master may determine, from the application and the case file, whether the amount requested is reasonable. *Bell v. Sec'y of Health & Human Servs.*, 18 Cl. Ct. 751, 760 (1989); *Rodriguez*, 2009 WL 2568468. Petitioner bears the burden of documenting the fees and costs claimed. *Id.* at \*8.

Petitioner requests the following rates for the work of his counsel: for Ms. Leah Durant, \$377.00 per hour for work performed in 2018, \$395.00 per hour for work performed in 2020, and \$420.00 per hour for work performed in 2021. These rates are consistent with what Ms. Durant has previously been awarded for her Vaccine Program work, and I find them to be reasonable

herein. *See, e.g., Durand v. Sec’y of Health & Human Servs.*, No. 15-1153V, 2020 WL 639372, at \*3 (Fed. Cl. Spec. Mstr. Jan. 16, 2020).

Turning next to review of the submitted billing statement, I find that the overall hours spent on this matter appear to be largely reasonable. However, there is a general issue of vagueness in the description of many of the billing entries, particularly those for communication with petitioner. As the Federal Circuit has previously ruled, disclosure of the general subject matter of billing statements does not violate attorney-client privilege and billing entries for communication should contain some indication as to the nature and purpose of the communication. *See Avgoustis v. Shinseki*, 639 F.3d 1340, 1344-45 (Fed. Cir. 2011). In the instant case, the majority of billing entries concerning communication do not contain any indication of the topic of that communication, (e.g., multiple entries billed for 0.4 hours for “client call”) making it difficult for the undersigned to determine whether such communication was necessary and reasonable. Other communication entries contain slightly more information but still are still vague overall (e.g., “Client call. Provide litigation update” or “Client call. Respond to questions.”). All those descriptions provide is an indication that case work was the subject to the communication, which should be a given. Entries describing with greater specificity the topic of discussion would make it easier for me to assess whether the communication was reasonable and necessary. Taken as a whole, the undersigned finds that the amount of communication with petitioner appears slightly excessive and insufficiently documented.

Accordingly, the undersigned shall reduce the final award of attorneys’ fees by two percent, resulting in a reduction of \$798.41. Petitioner is therefore awarded final attorneys’ fees of \$39,122.29.

#### **b. Attorneys’ 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 requests total attorneys’ costs in the amount of \$2,670.60. This amount is comprised of acquiring medical records, review of those records by Dr. Catherine Shaer, the Court’s filing fee, and postage. Fees App. Ex. 2 at 2. Petitioner has provided adequate supporting documentation for all the costs, and they appear to be reasonable upon review. Accordingly, Petitioner is awarded the full amount of attorneys’ costs sought.

Additionally, pursuant to General Order No. 9, petitioner has indicated that he has personally incurred costs of \$15.70 for postage. Petitioner has provided adequate documentation supporting the costs and they shall also be fully reimbursed.

### **III. Conclusion**

In accordance with the foregoing, Petitioner’s motion for attorneys’ fees and costs is **GRANTED**. I find that Petitioner is entitled to a reimbursement of attorneys’ fees and costs as follows:

|                           |              |
|---------------------------|--------------|
| Attorneys’ Fees Requested | \$39,920.70  |
| (Reduction of Fees)       | - (\$798.41) |

|                                        |                    |
|----------------------------------------|--------------------|
| <b>Total Attorneys' Fees Awarded</b>   | <b>\$39,122.29</b> |
|                                        |                    |
| Attorneys' Costs Requested             | \$2,670.60         |
| (Reduction of Costs)                   | -                  |
| <b>Total Attorneys' Costs Awarded</b>  | <b>\$2,670.60</b>  |
|                                        |                    |
| <b>Total Attorneys' Fees and Costs</b> | <b>\$41,792.89</b> |
|                                        |                    |
| <b>Petitioner's Costs</b>              | <b>\$15.70</b>     |
|                                        |                    |
| <b>Total Amount Awarded</b>            | <b>\$41,808.59</b> |

Accordingly, I award the following:

- 1) a lump sum in the amount of \$41,792.89, representing reimbursement for Petitioner's attorneys' fees and costs, in the form of a check payable to Petitioner and his attorney, Ms. Leah Durant<sup>3</sup>; and
- 2) a lump sum in the amount of \$15.70, representing reimbursement for Petitioner's costs, in the form of a check payable to petitioner.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court shall enter judgment in accordance herewith.<sup>4</sup>

**IT IS SO ORDERED.**

**/s/Thomas L. Gowen**

Thomas L. Gowen  
Special Master

<sup>3</sup> 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," and fees for legal services rendered. Furthermore, Section 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).

<sup>4</sup> Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. Vaccine Rule 11(a).