

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 20-0127V

LINDA FLETCHER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 25, 2024

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

Rachelle Bishop, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On February 4, 2020, Linda Fletcher 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 ("SIRVA") after receiving an influenza vaccine in her right shoulder on October 3, 2018. Petition at 1; Ex. 9 at ¶ 1. After briefing by the parties regarding the issue of entitlement, I issued a ruling finding Petitioner entitled to compensation on August 16, 2023. ECF No. 32. On October 6, 2023, I issued a decision awarding damages to Petitioner, based on Respondent's proffer. ECF No. 37.

¹Because 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).

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$35,875.11 (representing \$33,874.30 for fees and \$2,000.81 for costs). Petitioner's Application for Attorneys' Fees, filed Apr. 2, 2024, ECF No. 42. In accordance with General Order No. 9, counsel for Petitioner represents that Petitioner incurred \$403.78 in out-of-pocket expenses, equating to a total request of \$36,278.89. *Id.* at 2.

Respondent reacted to the motion on April 12, 2024, indicating 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, 3 n.2, ECF No. 43. Five days later - on April 17, 2023, Petitioner filed a reply requesting attorney's fees and costs be awarded in full. ECF No. 44.

Having considered the motion along with the invoices and other proof filed in connection, I find a reduction in the amount of fees and costs to be awarded appropriate, for the reason set forth below.

ANALYSIS

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 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 & Hum. 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 & Hum. 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 & Hum. 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 & Hum. 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 & Hum. Servs.*, 24 Cl. Ct. 482, 484 (1991). The Petitioner "should present adequate proof [of the attorney's fees

and costs sought] at the time of the submission.” *Wasson*, 24 Cl. Ct. 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. Hourly Rates

The rates requested for work performed through the end of 2023 are reasonable and consistent with our prior determinations, and will therefore be adopted. Petitioner has also requested 2024 attorney hourly rates as follows: \$486 for work performed by Leah Durant - representing a rate increase of \$23. ECF No. 42-1 at 10. I find this hourly rate to be reasonable, and will award the attorney’s fees requested. (And all time billed to the matter was also reasonably incurred)

However, a few of the tasks performed by Mr. Williams, an attorney at Petitioner’s counsel’s firm who worked on this case, are more properly billed using a paralegal rate.³ “Tasks that can be completed by a paralegal or a legal assistant should not be billed at an attorney’s rate.” *Riggins v. Sec’y of Health & Hum. Servs.*, No. 99-382V, 2009 WL 3319818, at *21 (Fed. Cl. Spec. Mstr. June 15, 2009). “[T]he rate at which such work is compensated turns not on who ultimately performed the task but instead turns on the nature of the task performed.” *Doe/11 v. Sec’y of Health & Hum. Servs.*, No. XX-XXXXV, 2010 WL 529425, at *9 (Fed. Cl. Spec. Mstr. Jan. 29, 2010). This reduces the amount of fees to be awarded by **\$91.80**.⁴

B. Hours Billed

I also note this case required additional briefing regarding the issue of entitlement, specifically site of vaccine administration and onset. See Respondent’s Rule 4(c) Report, filed Sept. 10, 2021, ECF No. 23; Petitioner’s Motion for a Ruling on the Record, filed Dec. 20, 2021, ECF No. 28; Petitioner’s Reply, filed Dec. 29, 2021, ECF No. 31. Petitioner’s counsel expended approximately 12.7 hours drafting the motion and 9.0

³ These entries describing the preparation and filing of medical records as exhibits in this case, dated as follows: 6/28/2021 (two entries) and 12/20/2021 No. 42-1 at 6,8.

⁴ This amount consists of $(\$325 - \$172) \times .6 \text{ hrs.} = \91.80 .

hours drafting the reply. ECF No. 42-1 at 7-10. I find this time to have been reasonably incurred. (And all time billed to the matter was also reasonably incurred.)

ATTORNEY COSTS

Furthermore, Petitioner has provided supporting documentation for all claimed costs, paid by counsel and Petitioner. ECF No. 42-2. Additionally, Respondent offered no specific objection to the rates or amounts sought. Thus, I will award the amount of attorney's costs sought in full.

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 \$36,187.09⁵ as follows:**

- **A lump sum of \$35,783.31, representing reimbursement in the amount of \$33,782.50 for attorney's fees and in the amount of \$2,000.81 for attorney's costs, in the form of a check payable jointly to Petitioner and Petitioner's counsel, Leah VaSahnja Durant; and**
- **A lump sum of \$403.78, 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.⁶

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

⁵ 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, 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 & Hum. Servs.*, 924 F.2d 1029 (Fed. Cir.1991).

⁶ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.