

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

Filed:

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DIANNE LEACH,	*	No. 20-1578V
	*	Special Master Sanders
Petitioner,	*	
	*	UNPUBLISHED
v.	*	
	*	
SECRETARY OF HEALTH	*	Attorneys' Fees and Costs
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
* * * * *		

Bridget C. McCullough, Muller Brazil, LLP, Dresher PA, for Petitioner;
Nancy Tinch, United States Dep't of Justice, Washington, DC, for Respondent.

DECISION AWARDING ATTORNEYS' FEES AND COSTS¹

On November 12, 2020, Dianne Leach ("Petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program² ("Vaccine Program" or "Program"). 42 U.S.C. § 300aa-10 to 34 (2012). Petitioner alleged that she suffered from chronic inflammatory demyelinating polyneuropathy ("CIDP") due to an influenza ("flu") vaccine administered on November 16, 2017. Pet. at 1. (ECF No. 1). On May 23, 2022, Petitioner filed a motion to dismiss

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 Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims'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.

her petition. (ECF No. 25). On June 30, 2022, the undersigned issued her decision dismissing the petition for insufficient proof. (ECF No. 26).

On January 6, 2023, Petitioner filed a motion for attorneys' fees. ("Fees App.") (ECF No. 31). Petitioner requests total attorney's fees and costs in the amount of \$18,048.25, representing \$12,472.50 in attorney fees and \$5,575.75 in attorney costs. Fees Mtn. at 2. Pursuant to General Order No. 9, Petitioner has indicated that she has not personally incurred any costs in pursuit of this claim. (ECF No. 30). Respondent responded to the motion on February 6, 2023, stating that Respondent "defers to the special master on whether the statutory requirements for an award of attorneys' fees and costs are met in this case." Resp't's Resp. at 2 (ECF No. 32). 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, the undersigned has reviewed the record and is satisfied that the requirements of good faith and reasonable basis have been met in the instant case. The undersigned also notes that Respondent has not offered any argument against either the good faith of reasonable basis the claim. Therefore, Petitioner is entitled to a final award of reasonable attorneys' fees and costs.

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. Hourly Rate

Petitioner requests the following hourly rates for the work of her counsel, Ms. Bridget McCullough, \$250.00 per hour for work performed in 2019, \$275.00 per hour for work performed in 2020, \$300.00 per hour for work performed in 2021, and \$350.00 per hour for work performed

in 2022 - 2023. These rates are consistent with what counsel has previously been awarded for her Vaccine Program work, and the undersigned finds them to be reasonable herein

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)).

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 attorney's fees in the amount of \$12,472.50.

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 \$5,575.75 in attorneys' costs, comprised of printing documents, medical records, and work performed by a medical expert, Samuel Pleasure. Petitioner has provided adequate documentation of all these expenses, and they appear reasonable in the undersigned's experience. Accordingly, Petitioner is awarded the full amount of costs sought.

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 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	\$12,472.50
(Reduction to Fees)	-
Total Attorneys' Fees Awarded	\$12,472.50
Attorneys' Costs Requested	\$5,575.75
(Reduction of Costs)	-
Total Attorneys' Costs Awarded	\$5,575.75
Total Attorneys' Fees and Costs	\$18,048.25

Accordingly, the undersigned awards a lump sum in the amount of \$18,048.25, representing reimbursement for Petitioner's attorneys' fees and costs, in the form of a check payable to Petitioner and her counsel, Ms. Bridget C. McCullough.

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/Herbrina D. Sanders
Herbrina D. Sanders
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.