

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-0072V

JANE MCGRAW,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 1, 2024

Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Lauren Kells, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On January 5, 2021, Jane McGraw 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 caused by an influenza vaccine administered on September 17, 2019. Petition at 1. On February 15, 2024, I issued a decision finding Petitioner entitled to compensation and awarding damages to Petitioner, following briefing by the parties. ECF No. 35.

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$24,397.42 (representing \$23,888.30 for fees and \$509.12 for costs). Petitioner's

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).

Application for Attorneys' Fees, filed Mar. 13, 2024, ECF No. 39. In accordance with General Order No. 9, counsel for Petitioner represents that Petitioner incurred no out-of-pocket expenses. *Id.* at 2. Respondent has not filed a response.

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: \$450 for work performed by Maximillian Muller - representing a rate increase of \$25. ECF No. 39 at 11. Additionally, Petitioner requests hourly rates ranging from \$140 to \$177 for paralegal work. *Id.* I find these hourly rates to be reasonable, and will award the attorney's fees requested.

I also note this case required additional briefing regarding the issues of entitlement and damages. See Petitioner's Motion for a Ruling on the Record, filed Dec. 1, 2022, ECF No. 31; Petitioner's Reply to Respondent's Response to Petitioner's Motion for Ruling on the Record, filed Jan. 11, 2023, ECF No. 33. Petitioner's counsel expended approximately 17.4 hours drafting the motion regarding entitlement and damages and 9.6 hours drafting the reply brief, totaling 27.0 hours. ECF No. 39 at 10-11. Although on the higher end of time expended preparing entitlement and damages brief in a case involving a SIRVA injury,³ I find this time to have been reasonably incurred. (And all time billed to the matter was also reasonably incurred.)

Furthermore, Petitioner has provided supporting documentation for all claimed costs, ECF No. 39 at 12-19. And Respondent offered no specific objection to the rates or amounts sought. I have reviewed the requested costs and find them to be reasonable.

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). **I award a total of \$24,397.42 (representing \$23,888.30 for fees and \$509.12 for costs) as a lump sum in the form of a check**

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 March 24, 2024): *Miller v. Sec'y of Health & Hum. Servs.*, No. 20-0959V (Feb. 5, 2024) (5.6 and 9.6 hours billed for drafting an entitlement brief and responsive brief and 6.7 and 6.2 hours billed drafting a separate, later damages brief and responsive brief); *Johnson v. Sec'y of Health & Hum. Servs.*, No. 19-1543V (Aug. 17, 2023) (17.8 and 9.7 hours billed for drafting an entitlement and damages brief and responsive entitlement and damages brief, respectively); *Piccolotti v. Sec'y of Health & Hum. Servs.*, No. 20-0135V (June 8, 2023) (11.6 and 3.8 hours billed for drafting an entitlement and damages brief and responsive entitlement and damages brief, respectively); *Merson v. Sec'y of Health & Hum. Servs.*, No. 18-0589V (May 18, 2023) (9.8 hours billed for drafting an entitlement and damages brief – although some time was doubtlessly saved by my March 9, 2020 factual ruling finding an appropriate pain onset); *C.H. v. Sec'y of Health & Hum. Servs.*, No. 20-0249V (May 16, 2023) (12.9 and 6.1 hours billed for drafting an entitlement and damages brief and responsive entitlement and damages brief, respectively).

jointly payable to Petitioner and Petitioner's counsel, Maximillian J. Muller. 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.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.