

CORRECTED

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-1210V

MARY TREPANIER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

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Chief Special Master Corcoran

Filed: December 29, 2025

Ronald C. Homer, Conway, Homer, P.C., Boston, MA, for Petitioner.

James Vincent Lopez, U.S. Dep't of Justice, Washington, DC, for Petitioner.

**DECISION GRANTING IN PART FINAL
AWARD OF ATTORNEY'S FEES AND COSTS¹**

On September 2, 2022, Mary Trepanier filed a petition seeking compensation under the National Vaccine Injury Compensation Program (the "Vaccine Program").² Petitioner alleged that she suffered transverse myelitis as a result of an influenza vaccine administered on October 9, 2020. *See generally* Amended Petition (ECF No. 30). Petitioner was unable to obtain expert support for her claim, and ultimately requested dismissal of the matter, which occurred last spring. Decision Dismissing Case, dated Mar. 31, 2025, (ECF No. 46) ("Decision").

¹ Under Vaccine Rule 18(b), each party has fourteen (14) days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the whole Decision will be available to the public in its present form. *Id.*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended at 42 U.S.C. §§ 300aa-10 through 34 (2012) [hereinafter "Vaccine Act" or "the Act"]. Individual section references hereafter will be to § 300aa of the Act (but will omit that statutory prefix).

Petitioner has now filed a motion for a final award of attorney’s fees and costs. Motion, dated Oct. 16, 2025 (ECF No. 50) (“Mot.”). This is Petitioner’s sole such request. Petitioner requests \$55,479.89, reflecting \$53,602.60 in attorney’s fees, plus \$1,877.29 in costs, for the work performed by attorneys at the law firm of Conway, Homer, P.C. Mot. at 1–2. The requested costs include Petitioner’s unreimbursed litigation costs, which are discussed in greater detail below. Respondent reacted to the present fees request on July 8, 2025. *See* Response, dated Oct. 20, 2025 (ECF No. 28) (“Resp.”). Respondent agrees that Petitioner has satisfied the statutory requirement for a fees award, but otherwise defers the calculation of the amount to be awarded to my discretion. Resp. at 2–3. Petitioner did not file a reply.

For the reasons set forth below, I hereby **GRANT IN PART** Petitioner’s motion, awarding fees and costs in the total amount of **\$55,439.35**.

I. Reasonable Basis is Met

Although the Vaccine Act only guarantees a fees award to successful petitioners, a special master may also award fees and costs in an unsuccessful case if: (1) the “petition was brought in good faith”; and (2) “there was a reasonable basis for the claim for which the petition was brought.” Section 15(e)(1). I have in prior decisions set forth at length the criteria to be applied when determining if a claim possessed “reasonable basis” sufficient for a fees award. *See, e.g., Sterling v. Sec’y of Health & Hum. Servs.*, No. 16-551V, 2020 WL 549443, at *4 (Fed. Cl. Spec. Mstr. Jan. 3, 2020). Importantly, establishing reasonable basis does not *automatically* entitle an unsuccessful claimant to fees, but is instead a threshold obligation; fees can still thereafter be limited, if unreasonable, or even denied entirely.

A claim’s reasonable basis must be demonstrated through some objective evidentiary showing. *Cottingham v. Sec’y of Health & Hum. Servs.*, 971 F.3d 1337, 1344 (Fed. Cir. 2020) (citing *Simmons v. Sec’y of Health & Hum. Servs.*, 875 F.3d 632, 635 (Fed. Cir. 2017)). This objective inquiry is focused on the claim—counsel’s conduct is irrelevant (although it may bulwark good faith). *Simmons*, 875 F.3d at 635. In addition, reasonable basis inquiries are not static—they evaluate not only what was known at the time the petition was filed, but also take into account what is learned about the evidentiary support for the claim as the matter progresses. *Perreira v. Sec’y of Health & Hum. Servs.*, 33 F.3d 1375, 1377 (Fed. Cir. 1994) (upholding the finding that a reasonable basis for petitioners’ claims ceased to exist once they had reviewed their expert’s opinion, which consisted entirely of unsupported speculation). As a result, a claim can “lose” reasonable basis over time.

The standard for finding the existence of reasonable basis is lesser (and, thus, inherently easier to satisfy) than the preponderant standard applied when assessing entitlement, as cases that fail can still have sufficient objective grounding for a fees award. *Braun v. Sec’y of Health & Hum.*

Servs., 144 Fed. Cl. 72, 77 (2019). The Court of Federal Claims has affirmed that “[r]easonable basis is a standard that petitioners, at least generally, meet by submitting evidence.” *Chuisano v. Sec’y of Health & Hum. Servs.*, 116 Fed. Cl. 276, 287 (Fed. Cl. 2014) (internal quotations omitted) (affirming special master). The factual basis and medical support for the claim is among the evidence that should be considered. *Carter v. Sec’y of Health & Hum. Servs.*, 132 Fed. Cl. 372, 378 (Fed. Cl. 2017). Under the Vaccine Act, special masters have “maximum discretion” in applying the reasonable basis standard. *See, e.g., Silva v. Sec’y of Health & Hum. Servs.*, 108 Fed. Cl. 401, 401–02 (Fed. Cl. 2012).

Here, I find that the present claim possessed reasonable basis at its onset and through the date Petitioner requested its dismissal. The record confirms that Petitioner received a flu vaccine, and presented to medical professionals three weeks later with complaints of numbness. It appeared later in the case that Petitioner’s treatment developments would not support her claim of post-vaccination transverse myelitis, however. Petitioner chose to dismiss her case after it came to light that Petitioner would likely not be able to substantiate her claim (as reflected in her difficulty obtaining an expert). Thus, the claim possessed reasonable basis at least through the time of its dismissal. And there is no reason otherwise to deny a fees award.

II. Calculation of Fees

Determining the appropriate amount of a fees award is a two-part process. The first part involves application of the lodestar method—“multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate.” *Avera v. Sec’y of Health & Hum. Servs.*, 515 F.3d 1343, 1347–48 (Fed. Cir. 2008) (quoting *Blum v. Stenson*, 465 U.S. 886, 888 (1984)). The second part involves adjusting the lodestar calculation up or down to take relevant factors into consideration. *Id.* at 1348. This standard for calculating a fee award is considered applicable in most cases where a fee award is authorized by federal statute. *Hensley v. Eckerhart*, 461 U.S. 424, 429–37 (1983).

An attorney’s reasonable hourly rate is determined by the “forum rule,” which bases the proper hourly rate to be awarded on the forum in which the relevant court sits (Washington, D.C., for Vaccine Act cases), except where an attorney’s work was not performed in the forum and there is a substantial difference in rates (the so-called “Davis” exception”). *Avera*, 515 F.3d at 1348 (citing *Davis Cty. Solid Waste Mgmt. & Energy Recovery Special Serv. Dist. v. U.S. Envtl. Prot. Agency*, 169 F.3d 755, 758 (D.C. Cir. 1999)). A 2015 decision established the hourly rate ranges for attorneys with different levels of experience who are entitled to the forum rate in the Vaccine Program. *See McCulloch v. Sec’y of Health & Hum. Servs.*, No. 09-293V, 2015 WL 5634323, at *19 (Fed. Cl. Spec. Mstr. Sept. 1, 2015).

Petitioner requests the following rates for her attorneys and support staff, based on the years work was performed:

	2021	2022	2023	2024	2025
Christina Ciampolilo (Attorney)	\$380.00	\$425.00	\$470.00	\$500.00	\$537.00
Patrick Kelly (Attorney)	--	\$250.00	--	\$345.00	--
Ronald Homer (Attorney)	--	\$475.00	\$500.00	\$525.00	\$567.00
Joseph Pepper (Attorney)	--	--	--	\$485.00	\$516.00
Nathaniel Enos (Attorney)	--	--	--	\$360.00	\$390.00
Meredith Daniels (Attorney)	--	--	--	--	\$516.00
Law Clerks	--	--	--	\$200.00	--
Paralegals	\$155.00	\$170.00	\$185.00	\$195.00	\$207.00

The attorneys at Conway, Homer, P.C. practice in Boston, MA—a jurisdiction that has been deemed “in forum.” Accordingly, they should be paid at forum rates, as established in *McCulloch*. See *Lozano v. Sec’y of Health & Hum. Servs.*, No. 15-396V, 2020 WL 7869439, at *3 (Fed. Cl. Spec. Mstr. Nov. 30, 2020). The rates requested (including newly 2025 rates) are also consistent with what has previously been awarded for the work of these attorneys, in accordance with the Office of Special Masters’ fee schedule.³ *Vanore v. Sec’y of Health & Hum. Servs.*, No. 21-870V, 2025 WL 407022 (Fed. Cl. Spec. Mstr. Jan. 3, 2025). I thus find no cause to reduce them in this instance. And I find the time devoted to the case reasonable as well, and will not adjust the hours spent on this matter.

III. Calculation of Attorney’s Costs

Just as they are required to establish the reasonableness of requested fees, petitioners must also demonstrate that requested litigation costs are reasonable. *Presault v. United States*, 52 Fed. Cl. 667, 670 (2002). Reasonable costs include the costs of obtaining medical records and expert time incurred while working on a case. *Fester v. Sec’y of Health & Hum. Servs.*, No.10-243V, 2013 WL 5367670, at *16 (Fed. Cl. Spec. Mstr. Aug. 27, 2013). When petitioners fail to substantiate a cost item, such as by not providing appropriate documentation to explain the basis for a particular cost, special masters have refrained from paying the cost at issue. See, e.g., *Gardner-Cook v. Sec’y of Health & Hum. Servs.*, No. 99-480V, 2005 WL 6122520, at *4 (Fed. Cl. Spec. Mstr. June 30, 2005).

³ OSM Attorneys’ Forum Hourly Rate Fee Schedule, <https://www.uscfc.uscourts.gov/osm-attorneys-forum-hourly-rate-fee-schedules> (last visited Dec. 19, 2025).

Petitioner seeks \$1,877.29 in outstanding costs, including the filing fee, medical record retrieval costs, and mailing costs. Mot. at 25. However, documentation was only provided to substantiate \$1,836.75 of that sum, which includes the Court's filing fee, medical records requests, copying expenses, and some mailing expenses. *Id.* at 27–40. I will only grant fees that are substantiated by documentation. Therefore, I grant \$1,836.75 in attorney's costs.

CONCLUSION

Based on the foregoing, and in the exercise of the discretion afforded to me in determining the propriety of a final fees award, I **GRANT IN PART** Petitioner's Motion for Attorney's Fees and Costs, awarding a total amount of \$55,439.35, reflecting \$53,602.60 in attorney's fees and \$1,836.75 in costs, to be paid through an ACH deposit to Petitioner's counsel's IOLTA account for prompt disbursement.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with the terms of 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 if (jointly or separately) they file notices renouncing their right to seek review.