

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-1260V

MARY HAY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: November 4, 2024

David N. Damick, Law Offices of David N. Damick, St. Louis, MO, for Petitioner.

Sarah Christina Duncan, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On September 8, 2022, Mary Hay 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 shoulder injury related to vaccine administration as a result of an influenza vaccine administered on October 28, 2020. Petition, ECF No. 1. On June 12, 2024, I issued a decision awarding compensation to Petitioner based on Respondent's proffer. ECF No. 30.

¹ Because 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 \$12,778.25 (representing \$11,741.86 in fees plus \$1,036.39 in costs). Application for Attorney's Fees and Costs ("Motion") filed June 26, 2024. ECF No. 35. Furthermore, counsel for Petitioner represents that Petitioner incurred no personal out-of-pocket expenses. *Id.* Respondent reacted to the motion on June 28, 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, ECF No. 36. Petitioner did not file a reply thereafter.

I have reviewed the billing records submitted with Petitioner's request. Petitioner has requested the hourly rate of \$350 for work performed by attorney David Damick, for all time billed in the 2021-24 timeframe; and the hourly rate of \$90 for work performed by his paralegal. I find the requested rates to be reasonable and hereby award them herein. And all time billed to the matter was also reasonably incurred.

I have also reviewed the requested costs but find that Petitioner's counsel has not substantiated them with the required supporting documentation, such as an invoice or proof of payment. See ECF No. 35-1. I will nevertheless reimburse these costs in full, since the amount requested is not particularly large. But Petitioner's counsel should be aware that any future requests for costs may result in a curtailed (or denied) award for failure to include the required supporting documentation. See Guidelines for Practice Under the National Vaccine Injury Compensation Program at 75-78 (emphasis added).³

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. **I award a total of \$12,778.25 (representing \$11,741.86 in fees plus \$1,036.39 in costs) as a lump sum in the form of a check jointly payable to Petitioner and Petitioner's counsel, David N. Damick.** 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

³ The guidelines for Practice Under the National Vaccine Injury Compensation Program can be found at: https://www.uscfc.uscourts.gov/sites/default/files/vaccine_guidelines_20240318.pdf

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.

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master