

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-1717V

ILENE ROBINSON SUNSHINE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 15, 2025

*Nicole Anne Caplan-Mason, Law Office of Sylvia Chin-Caplan, LLC, Boston, MA, for
Petitioner.*

Adam Nemeth Muffett, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On November 21, 2022, Ilene Robinson Sunshine filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). On June 26, 2023, Petitioner filed an amended petition. Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) resulting from an influenza vaccine received on October 17, 2020. Amended Petition at 1. On April 17, 2024, I issued a decision awarding damages to Petitioner, based upon 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).

On November 6, 2024, Petitioner filed a motion for leave to file out of time an attached application for attorney's fees and costs, requesting an award of \$25,954.45 (representing \$24,436.30 for attorney's fees, \$1,116.15 for attorney's costs, and \$402.00 for Petitioner's out-of-pocket litigation costs). ECF No. 42. In accordance with General Order No. 9, counsel for Petitioner represents that she incurred \$402.00 in out-of-pocket expenses. ECF No. 42-1 at 1. Petitioner's counsel adds that she will reimburse Petitioner for any additional litigation costs – not currently known. *Id.* at 1-2. Respondent has not filed a response.

TIMELINESS OF MOTION

Vaccine Rule 13 provides that a request for fees and costs must be filed no later than 180 days after judgment is entered. RCFC, Vaccine Rule 13(a). In this case, Judgment was entered on April 18, 2024, making Petitioner's motion due on or before October 15, 2024. But Petitioner filed her motion on November 6, 2024 – *22 days past the required deadline*. When requesting that I allow the untimely request, Petitioner cited the sad passing of Petitioner's counsel - the family member of other attorneys at the law firm on October 15, 2024. ECF No. 42. Given these distressing circumstances, I will allow the untimely request, without reduction due to its late filing.

ATTORNEY FEES

The rates requested for work performed through the end of 2024 are reasonable and consistent with our prior determinations. And all time billed to the matter was also reasonably incurred.

ATTORNEY AND PETITIONER COSTS

Furthermore, Petitioner has provided supporting documentation for all claimed attorney costs. ECF No. 42-2 at 18-34. And she has provided documentation showing she paid the \$402.00 filing fee for her claim. *Id.* at 35-36. Furthermore, 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 \$25,954.45 (representing \$24,436.30 for attorney's fees, \$1,116.15 for attorney's costs, and \$402.00 for Petitioner's out-of-pocket litigation costs) to be paid through an ACH deposit to**

Petitioner's counsel's IOLTA account for prompt disbursement. 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.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.