

have been advised that such a judgment will end all of his/her/their rights in the Vaccine Program.

4. Respondent has no objection to petitioner's(s') Motion for Dismissal Decision.

Accordingly, petitioner(s) move(s) for a decision dismissing his/her/their petition.

B. Motion for Attorneys' Fees and Costs

Petitioner(s) also move(s) for an award of reasonable attorneys' fees and costs in this case. Counsel for petitioner(s) has reviewed the Order in *Whiffen v. Sec'y, HHS*, No. 03-1223V, that discussed reasonable hours and costs incurred for the processing of an Omnibus Autism Proceeding ("OAP") case. *See* Order, December 15, 2010 ("Order"). The special master in *Whiffen* analyzed the billing records of several law firms with a substantial number of cases in the OAP, and concluded that most pending OAP cases fall into one of four general categories. *Id.* at 6. Each category is based on where in the process of developing the case for resolution on the merits a particular claim falls. *Id.* at 7. These categories are as follows:

Category A is comprised of cases in which no Phase 1 order was issued. These files consist of the short-form petition but few, if any, medical records. Medical records may have been collected, but not filed. Little court-ordered activity occurred in a Category A case after the filing of the petition.

Category B is comprised of cases in which petitioner filed a petition and medical records, whether in response to a Phase 1 order or otherwise. Respondent either did not respond, or responded with a statement regarding whether she believed the case should proceed in the OAP. If respondent filed such a statement, a petitioner in a Category B case did not respond to that statement.

Category C is comprised of cases in which petitioner filed a petition and medical records, respondent filed a statement or motion necessitating a response, and petitioner filed a substantive response to that statement and may have filed additional medical records as a part of that response.

Category D is comprised of cases in which petitioner filed a petition and medical records, whether in response to a Phase I order from the court or otherwise. Respondent, in turn, indicated that the case was properly and timely filed in the

OAP, and thereafter filed more medical records and a Statement of Completion in response to a Phase 2 order from the court.

Id. at 7-8. The special master further determined, based on each firm’s particular business model, a reasonable number of hours and costs expended in cases fitting these categories. *Id.* at 9-17.

Petitioner’s(s’) counsel has determined that processing in OAP cases handled by his/her firm generally correspond to the categories described in *Whiffen*. After informal discussions, and based on a review of the Order in *Whiffen* and billing information submitted by petitioner’s(s’) counsel, the parties have stipulated that for each category, the following number of attorney and paralegal hours, and reimbursable costs, is reasonable:

Category	Attorney Hours	Paralegal Hours	Costs (excluding filing fee)
A			
B			
C			
D			

1. The parties have stipulated that this is a Category ____ case.
2. The parties have also stipulated as to appropriate hourly rates for attorneys and paralegals.
3. Therefore, the parties stipulate to the following: attorneys’ fees of \$_____; paralegal fees of \$_____, costs of \$_____, and a filing fee of \$_____, for a total of \$_____.
. 4. (Alternative 1): Of this award, petitioner(s) request(s) reimbursement of \$_____, jointly payable to petitioner(s) and petitioner’s(s’) attorney, NAME OF ATTY, for all attorney and paralegal fees, and costs. Counsel for petitioner(s) represents that he/she will reimburse

petitioner(s) for any personal litigation costs compensable under the Vaccine Act from the award of attorneys' fees and costs in this case.

4. (Alternative 2): Of this award, petitioner(s) request(s) reimbursement of \$_____, jointly payable to petitioner(s) and petitioner's(s') attorney, NAME OF ATTY, for all attorney and paralegal fees and costs, and \$_____, payable solely to petitioner(s) for out-of-pocket costs expenses that petitioner(s) incurred in this case (see Tab 1– Petitioner's(s') statement in accordance with General Order #9).

5. Petitioner(s) understand(s) that the (two) payment(s) totaling \$_____ represent(s) all attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). Counsel for respondent has informed counsel for petitioner(s) that he/she does not oppose this motion.

Accordingly, petitioner(s) request(s) that a decision awarding attorneys' fees and costs to petitioner(s) and his/her/their attorney, NAME OF ATTY, in the amount of \$_____ (, and to petitioner(s) in the amount of \$_____,) be issued.

Respectfully submitted,

s/

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Date: