

In the United States Court of Federal Claims

No. 99-455V
(Filed: August 4, 2008)

CARLY IRIS DUNCAN, by her
parents and natural guardians, CARL
and STACEY DUNCAN,

Petitioners,

National Vaccine Injury
Compensation Program;
Attorney fees.

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Clifford J. Shoemaker, Vienna, VA, with whom was *Renée J. Gentry*
for plaintiff.

Melonie J. McCall, United States Department of Justice, Civil Division,
Tort Branch, Washington, DC, with whom were *Gregory G. Katsas*, Assistant
Attorney General, *Timothy P. Garren*, Director, *Vincent J. Matanoski*, Acting
Deputy Director, and *Catharine E. Reeves*, Assistant Director for defendant.

ORDER ON PETITION FOR REVIEW

This is an action under the National Childhood Vaccine Injury Act of
1986, 42 U.S.C. §§ 300aa-1 through 300aa-34 (2006) (“Act”). It comes before
the court on petitioners’ motion, pursuant to 42 U.S.C. § 300aa-12(e)(1), and
Appendix B of the RCFC, for review of the decision of Special Master Moran
awarding petitioners’ request for attorneys’ fees and costs, although in a
somewhat smaller amount than requested. For reasons set out below, we deny
the petition for review.

A brief description of the procedural background suffices. Petitioners sought compensation for injuries associated with administration of the hepatitis B vaccine to Carly Iris Duncan. The matter was ultimately resolved by settlement. Thereafter, petitioners submitted an amended application for reimbursement of attorneys fees and costs in the amount of \$14,245.75. The Special Master ultimately awarded \$12,262.50 in fees and \$376.13 in costs. This represents a reduction of slightly less than \$2,000 in fees and \$28.16 in costs.

With respect to fees, the parties agreed to an hourly figure and it was undisturbed by the Special Master. He did, however, reduce the number of hours allowed. He did so in a very detailed fashion. While the scrutiny involved was rigorous, the Special Master is in a much better posture to critique the hours spent. We have examined each of the items reduced and, while we might have come to a different conclusion as to stray items, that is not the test. We find nothing remotely arbitrary or capricious in the results. Each reduction was plausibly explained and the petition for review offers no grounds for reversal under our limited standard of review. The same is true of the rejection of express delivery service costs in one instance.

The procedural bases for challenge we also reject. The assertion is that it was improper for the Special Master to deduct hours when they were not the subject of a specific objection by respondent. The factual predicate behind that assertion is correct, as far as it goes. The Special Master made some reductions not specifically proposed by respondent. He also rejected many of the reductions respondent requested, however. And respondent made generalized challenges as well as specific ones. In any event, the Special Master has an independent responsibility to satisfy himself that the fee award is appropriate and not limited to endorsing or rejecting respondent's critique. We agree with respondent, as well, that the Special Master had no additional obligation to warn petitioners that he might go beyond the particularized list of respondent's challenges. The request for fees must be complete when submitted. Nor do we find any legal objection to the level of documentation the Special Master sought. He did, in fact, reject challenges on more than one occasion to minimal descriptions of work.

CONCLUSION

Petitioners' Motion for Review is denied. Accordingly, the Special Master's decision is affirmed. The Clerk is directed to enter judgment accordingly.

s/Eric G. Bruggink

ERIC G. BRUGGINK

Judge