

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-311V

(Filed: June 7, 2011)

JASON BYERS and BRIDGET BYERS,)	
parents and legal representatives of a minor child,)	UNPUBLISHED
BROOKE BYERS,)	
)	Interim Attorneys' Fees
Petitioners,)	and Costs; Reasonable
)	Amount Requested
v.)	to which Respondent
)	Does Not Object
SECRETARY OF THE DEPARTMENT)	
OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

William A. Miller, Jr., Louisville, KY, for petitioner.

Ryan Daniel Pyles, Washington, DC, for respondent.

DECISION¹

On April 25, 2008, Jason and Bridget Byers (“petitioners”), filed a petition for compensation on behalf of their daughter Brooke, alleging that as a result of the Measles-Mumps-Rubella (MMR) vaccine administered to Brooke on May 9, 2005, she suffered from status epilepticus,² which was followed by a hemiplegic stroke (infarction), and

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 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 entire” decision will be available to the public. Id.

² Status epilepticus is “1. A continuous series of generalized tonic-clonic seizures

ushered in a long-term seizure disorder. They sought an award under the National Vaccine Injury Compensation Program, National Vaccine Injury Compensation Program³ (the Act or the Program). 42 U.S.C. §§ 300aa-1 to -34 (2006).

On April 18, 2011, petitioner's counsel filed a motion for interim fees (Interim Fees Motion). On May 6, 2011, respondent's counsel filed a response with a number of objections. A status conference was conducted by the undersigned on May 19, 2011, wherein the undersigned encouraged the parties to settle the interim fees and costs issue.

On May 23, 2011, counsel for petitioner filed an amendment to his earlier request for interim attorneys' fees and costs, stating that a decision should be entered awarding interim attorneys' fees, attorneys' costs, and petitioner's costs in the total amount of \$28,926.99. On the same date, respondent's counsel filed a stipulation of fact concerning interim attorneys' fees and costs. The requested amounts in the amended petition and the stipulation differed. In response to an inquiry from chambers about the difference, the parties indicated by telephone that the stipulation of fact should supercede the amendment filed by petitioner.

The parties stipulated that in the event that the undersigned found an award of interim attorneys' fees and costs in this matter to be appropriate, then respondent would not object to petitioners' attorneys' amended request for **\$29,000.00 in the form of a check payable to petitioner and petitioner's attorney's firm, Hummel Coan Miller & Sage, for interim attorneys' fees and costs.** See Stipulation at 2.

Petitioner is entitled to an award of interim attorneys' fees and attorneys' costs. The special master determines that there is no just reason to delay the entry of judgment on interim attorneys' fees and attorneys' costs. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court **SHALL ENTER JUDGMENT in petitioner's favor for \$29,000 in interim attorneys' fees and attorneys' costs.** Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

without return to consciousness, a life-threatening emergency . . . 2. any prolonged series of similar seizures without return to full consciousness between them." Dorland's Illustrated Medical Dictionary (31st ed. 2007) (Saunders) at 1793.

³ The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

IT IS SO ORDERED.

Patricia E. Campbell-Smith
Special Master