

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 05-0694V

E-Filed: November 30, 2010

* * * * *

TYSHEEM HARGROVE, JR., a minor *

by his parents and natural guardians *

FELICIA WISE and TYSHEEM *

HARGROVE, SR., *

Petitioners, *

v. *

SECRETARY OF HEALTH AND *

HUMAN SERVICES, *

Respondent. *

* * * * *

Stipulation of Interim Attorneys’
Fees and Costs; Diphtheria-
Tetanus-Acellular Pertussis
Vaccination; Transverse
Myelitis

Lawrence Cohan, Philadelphia, PA, for petitioner.

Linda Renzi, Washington, DC, for respondent.

INTERIM ATTORNEYS’ FEES AND ATTORNEYS’ COSTS DECISION¹

CAMPBELL-SMITH, Special Master

¹ Because this document contains a reasoned explanation for the action of the undersigned, the document shall post on the website of the United States Court of Federal Claims 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 fourteen days within which to request the redaction “of any information furnished by that party (1) that is 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.” Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of timely objection, the entire document will be made publicly available.

On June 27, 2005, Tysheem Hargrove, Sr., and Felicia Wise on behalf of their son, Tysheem Hargrove Jr., filed a claim for compensation pursuant to the National Vaccine Injury Compensation Program (Vaccine Program or Program).² 42 U.S.C. §§ 300aa-1 to -34 (2006). On May 20, 2003, Tysheem Jr., received a diphtheria-tetanus[-acellular] pertussis (“DTaP”), inactivated polio, and pneumococcal conjugate vaccinations. Petition at 2. Petitioners allege that Tysheem suffers from transverse myelitis, which was “caused-in-fact” by his May 20, 2003 DTaP vaccination.

On November 19, 2010, the parties filed a Joint Status Report and Stipulation of Interim Attorney Fees and Costs (“Interim Fees Stipulation”). Petitioners seek interim fees and costs pursuant to 42 U.S.C. § 300aa-15(e) of the National Childhood Vaccine Injury Act of 1986, as amended (the Vaccine Act), and Rule 13 of the United States Court of Federal Claims Vaccine Rules, and further to the guidance provided in Avera v. Secretary of the Department of Health and Human Services, 515 F.3d 1343 (Fed. Cir. 2008). Based on the cited authority, petitioners request interim attorneys’ fees and costs in the amount of \$129,495.59.³ Interim Fees Stipulation at 2.

Respondent does not object to an interim award of attorneys’ fees in the amended requested amount of \$103,138.00. Respondent also does not object to an interim award of attorneys’ costs in the requested amount of \$26,357.59.

Based on the reasonableness of petitioners’ request, and based on respondent’s counsel’s lack of objection to petitioners’ counsel’s amended interim fees and costs request, the undersigned **GRANTS** the motion for payment of interim attorneys’ fees and costs.

It is the opinion of the undersigned that the circumstances of this case are appropriate for an interim award of petitioner’s counsel’s fees of \$103,138.00, and for an interim award of petitioners’ counsel’s costs of \$26,357.59. The undersigned determines

² 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-10 et seq. (2006) (Vaccine Act or the Act). All citations in this Decision to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

³ As reflected in the Joint Status Report, petitioners submitted an informal request for interim attorneys’ fees and costs in the amount of \$146,892.38, and then submitted an additional \$13,912.71 in expert’s costs. Interim Fee Stipulation at 1. Respondent objected to petitioners’ counsel’s initial request for interim fees and petitioners’ counsel amended his request to reflect the amounts to which the parties could agree. Id.

that there is no just reason to delay the entry of judgment on an award of interim attorneys' fees and costs. Therefore, in the absence of a motion for review filed under Appendix B of the Rules of the United States Court of Federal Claims, the Clerk of the Court shall enter judgment in petitioners' favor for \$129,495.59, 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.

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Special Master