

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
E-Filed: March 28, 2012

* * * * *	*	
ELEANOR D. HERNANDEZ,	*	No. 11-94V
	*	
Petitioner,	*	Chief Special Master
	*	Campbell-Smith
v.	*	
	*	Award of Attorneys' Fees and
SECRETARY OF THE	*	Costs; Amount to Which
DEPARTMENT OF	*	Respondent Does Not Object.
HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	
* * * * *	*	

Elizabeth M. Muldowney, Rawls, McNelis & Mitchell, P.C., Richmond, VA, for petitioner.

Michael P. Milmoe, U.S. Department of Justice, Washington, D.C., for respondent.

ATTORNEYS' FEES AND COSTS DECISION¹

On February 14, 2011, Eleanor D. Hernandez (“petitioner”) filed a petition seeking compensation under the National Vaccine Injury Compensation Program

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, § 205, 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.

(“Vaccine Program”).²

In the petition, petitioner alleges that she received a tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis (“Tdap”) vaccine on February 26, 2008, and thereafter suffered from neuropathic pain. Pet. at 1.

On February 16, 2012, the undersigned issued a decision based on the parties’ stipulation to damages. See Decision on Damages, Feb. 16, 2012.

On March 28, 2012, petitioner’s counsel filed a stipulation of facts for reasonable attorneys’ fees and costs, to which the parties had agreed during informal discussions. See Stip. for Attorneys’ Fees and Costs.

The Vaccine Act permits an award of reasonable attorneys’ fees and costs. § 15(e). Based on the reasonableness of petitioner’s request and respondent’s counsel’s lack of objection to petitioner’s counsel’s fee request, the undersigned **GRANTS** petitioner’s counsel’s stipulation of facts for attorneys’ fees and costs.

The undersigned awards a total of **\$12,250.00** in attorneys’ fees and costs.³ In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in petitioner’s favor in the amount of **\$12,000.00** for attorneys’ fees and costs and **\$250.00** for petitioner’s costs.⁴

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-1 to -34 (2006) (“Vaccine Act” or “Act”). All citations in this decision to individual sections of the Act are to 42 U.S.C.A. § 300aa.

³ This award is intended to cover all legal expenses incurred in this matter and contemplates attorneys’ fees and costs in the amount of **\$12,000.00**, payable jointly to petitioner and her attorney of record. During informal discussions, the parties were able to identify a slight reduction in petitioner’s draft application amounts, to which respondent would not object.

This award is also intended to cover all reimbursable out-of-pocket expenses pursuant to General Order No. 9 and contemplates reimbursable out-of-pocket costs of **\$250.00**, payable solely to petitioner.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties’ joint filing of notice renouncing the right to seek review.

The judgment shall reflect that Rawls, McNelis & Mitchell, P.C. may collect **\$12,000.00** from petitioner. Petitioner may retain **\$250.00** for costs borne by petitioner.

IT IS SO ORDERED.

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

Respectfully submitted,

/s/ Elizabeth M. Muldowney
Elizabeth M. Muldowney
Attorney for Petitioner
Rawls, McNelis & Mitchell, PC
Suite 1701
1111 East Main Street
Richmond, VA 23219
(804) 622-0676

/s/ Michael P. Milmoe
Michael P. Milmoe
Attorney for Respondent
Senior Trial Attorney
Torts Branch, Civil Division
US Department of Justice
PO Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4125

Date: March 28, 2012

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

ELEANOR D. HERNANDEZ,)	
)	
Petitioner,)	
)	
v.)	No. 11-094V
)	
SECRETARY OF HEALTH AND)	Special Master Campbell-Smith
HUMAN SERVICES,)	
)	
Respondent.)	
)	

PETITIONER AND COUNSEL STATEMENT

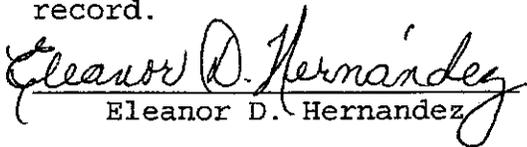
On June 19, 2008, the Chief Special Master filed General Order #9 requiring that all future applications for fees and costs contain a statement delineating costs borne by counsel and costs borne by petitioner, including the amount of any retainer that has been paid.

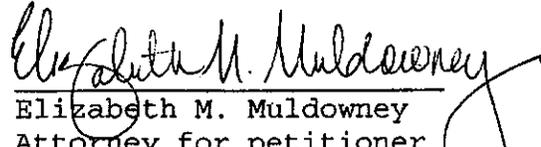
This statement is filed in compliance with that Order.

COSTS

Eleanor D. Hernandez	\$ 250.00
Rawls, McNelis & Mitchell, PC	\$ 465.62
Total	\$ 715.62

No retainer was ever paid by petitioner to his counsel of record.


 Eleanor D. Hernandez


 Elizabeth M. Muldowney
 Attorney for petitioner
 Rawls, McNelis & Mitchell, PC
 Suite 1701
 1111 East Main Street
 Richmond, Virginia 23219
 (804) 622-0676

Date: February 28, 2012