

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
(E-Filed: January 28, 2011)

HANNAH POLING, a minor,)	PUBLISHED
by her Parents and Natural Guardians,)	
TERRY POLING AND JON POLING,)	Attorneys' Fees and Costs;
)	Reasonable Amount Requested
Petitioners,)	to which Respondent Does Not
)	Object
v.)	
)	No. 02-1466V
SECRETARY OF HEALTH AND HUMAN)	Special Master Campbell-Smith
SERVICES,)	
)	
Respondent.)	
)	

Clifford J. Shoemaker, Vienna, VA, for petitioners

Catharine E. Reeves, Washington, DC, for respondent

ATTORNEYS' FEES AND COSTS DECISION¹

CAMPBELL-SMITH, Special Master

On October 25, 2002, petitioners, Terry and Jon Poling, filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Vaccine

¹ 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 file a motion for redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). In the absence of such motion, “the entire” decision will be available to the public. Id

Program”).²

Respondent conceded that petitioners are entitled to compensation based on a determination that she suffered an injury identified on the Vaccine Injury Table,³ specifically, a presumptive MMR vaccine-related injury of an encephalopathy. Hannah’s encephalopathy eventually manifested as a chronic encephalopathy with features of autism spectrum disorder and a complex partial seizure disorder as a sequela.

Based on the persuasive factors supporting petitioner's vaccine claim and respondent's election not to challenge petitioner's claim, the undersigned issued a decision finding that petitioner is entitled to compensation under the Vaccine Program on July 21, 2010, and awarding damages.⁴ See Decision Awarding Damages.

On January 5, 2011, petitioners’ counsel filed an Application for Attorneys’ Fees and Costs. See Application for Attorneys’ Fees and Costs (Fee App.). On January 19, 2011, respondent filed Respondent’s Response in Opposition to Petitioners’ Application for Attorneys’ Fees and Costs. See R’s Response.

On January 24, 2011, the parties communicated telephonically with the undersigned’s law clerk and indicated that they were able to determine a reasonable amount of attorneys’ fees and costs to which respondent would agree not to object.

The Vaccine Act permits an award of reasonable attorneys’ fees and costs. 42 U.S.C. § 300 aa-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

² The Program comprises 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.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

³ Pursuant to the Vaccine Act, petitioners may establish entitlement to compensation by establishing that petitioner suffered an injury or condition set forth in the Vaccine Injury Table within the requisite Table time period. In this instance, causation is presumed. See 42 U.S.C. § 300aa-14 and 42 C.F.R. § 100.3

⁴ The Decision Awarding Damages originally issued on July 21, 2011, was re-issued on July 22, 2010, was re-issued for redaction on July 23, 2010, and re-issued a second time for further redaction on August 27, 2010.

undersigned **GRANTS** petitioner's counsel's revised application for attorneys' fees and costs.

The undersigned awards a total of \$155,000.00 in attorneys' fees and costs and petitioners' costs. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGEMENT** in petitioners' favor in the amount of \$140,000.00 in attorneys' fees and attorneys' costs and \$15,000.00 in petitioners' costs.⁵ The judgment shall reflect that Shoemaker and Associates may collect \$140,000.00 from petitioners. Petitioners may retain \$15,000.00 for costs borne by petitioners.

IT IS SO ORDERED.

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

⁵ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.