

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 07-111V

Filed: August 28, 2009

<hr/>	)	
<b>KELLY BUTLAND, as the Legal</b>	)	
<b>Representative of Her Minor Daughter,</b>	)	
<b>for LENZIE BUTLAND,</b>	)	
	)	UNPUBLISHED
	)	
<b>Petitioner,</b>	)	Interim Petition for Attorneys’
	)	Fees and Costs; Award of a
<b>v.</b>	)	Reasonable Amount to which
	)	Respondent Has Not Objected
<b>SECRETARY OF THE DEPARTMENT</b>	)	
<b>OF HEALTH AND HUMAN SERVICES,</b>	)	
	)	
<b>Respondent.</b>	)	
<hr/>	)	

Curtis Webb, Twin Falls, ID for petitioner.

Rebecca Trinrud, Department of Justice, Civil Division, Torts Branch, Washington, DC, for respondent.

### INTERIM ATTORNEYS’ FEES AND ATTORNEYS’ COSTS DECISION<sup>1</sup>

**CAMPBELL-SMITH, Special Master**

---

<sup>1</sup> 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 February 16, 2007, Kelly Butland (Mrs. Butland or petitioner), as the legal representative of her minor daughter Lenzie Butland (Lenzie), filed a petition pursuant to the National Vaccine Injury Compensation Program.<sup>2</sup> 42 U.S.C. §§ 300aa-1 to -34 (2006). Petitioner alleges that MMR (mumps, measles, rubella) and varicella vaccinations<sup>3</sup> administered on December 22, 2004, caused Lenzie to develop Opsoclonus-Myoclonus Syndrome (OMS).<sup>4</sup> See Petition (Pet.) ¶ 3; Petitioner's Exhibit (Pet. Ex.) 1 ¶ 53 (Affidavit of Mrs. Butland). On June 19, 2009, the undersigned issued a Ruling on Entitlement finding that petitioner was entitled to compensation. See June 19, 2009 Ruling on Entitlement.

Pending before the undersigned is Petitioner's Interim Petition for Attorney Fees and Costs (P's App.). Petitioner seeks 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, petitioner requests interim attorneys' fees in the amount of \$27,550.00. P's App. at 2. Petitioner also request interim attorneys' costs in the amount of \$6,154.62. Id. Petitioner did not request an interim award of petitioner's costs pursuant to General Order No. 9. The total interim fees and costs request is \$33,704.62. Id. The requested amount is for attorney fees and costs incurred in the prosecution of petitioner's case through June 23, 2009, but does not include costs associated with Dr. Marcel Kinsbourne, petitioner's expert witness in this matter. Id. at 3.

Petitioner's counsel has conferred with respondent's counsel and respondent has no objection to an interim award of attorneys' fees and costs in the requested amount of \$33,704.62. Id. Based on the reasonableness of petitioner's request and on respondent's counsel's lack of objection to petitioner's counsel's interim fees request, the undersigned

---

<sup>2</sup> 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.A. § 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.A. § 300aa.

<sup>3</sup> Varicella is chickenpox. Dorland's Illustrated Medical Dictionary 2008 (30th ed. 2003).

<sup>4</sup> Opsoclonus-myoclonus syndrome involves movement of the eyes (opsoclonus) and the trunk (myoclonus), occurring in conjunction with a number of conditions, including viral infections, trauma, drug toxicity, tumors, and hypsormolar nonketotic coma (a variation of a diabetic coma). Dorland's at 1827.

**GRANTS** the attorneys' fees and costs as outlined in petitioner's Interim Petition for 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 \$27,550, and petitioner's counsel's costs of \$6,154.62. No out-of-pocket expenses were requested in this interim fees request. The undersigned determines 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 \$33,704.62 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.**

---

Patricia E. Campbell-Smith  
Special Master