

OFFICE OF SPECIAL MASTERS

No. 99-632V

Filed: January 5, 2006

ELIZABETH BERGEM, *

Petitioner, *

v. *

PUBLISHED

SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, *

Respondent. *

DECISION ON ATTORNEY’S FEES AND COSTS¹

On November 16, 2005, petitioner submitted a “Petitioner’s Application for Fees and Costs” [hereinafter “Application”]. In the Application, petitioner’s counsel reports that on or about October 11, 2005, he sent a draft fee and cost application for respondent’s counsel to review. Respondent’s counsel had objections to the initial request, but subsequently, after discussions, the parties agreed to an appropriate amount for fees and costs. As filed with the court, the Application requests \$13,547.00 in attorney’s fees and \$1181.13 in costs. Petitioner’s counsel also represented that the respondent has reviewed the Application and has no objections. The Application, however, did not contain a petitioner and counsel statement in compliance with General Order #9. The court orally alerted petitioner’s counsel to this omission.

On December 12, 2005, petitioner submitted Exhibit 17. Included in this exhibit are three

¹Because this decision contains a reasoned explanation for the special master’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’s website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Therefore, as provided by Vaccine Rule 18(b), each party has fourteen (14) days within which to request 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). Otherwise, “the entire” decision will be available to the public. Id.

items. The first is an “Affidavit of Susan Farrell” [hereinafter Farrell Aff.].² The second, labeled as “Tab A,” is a letter dated September 28, 2005 from Ms. Farrell to the petitioner. The third part of this exhibit is labeled “Tab B” and is an unsigned petitioner and counsel statement representing that of the \$1181.13 in costs, \$120.00 was paid by petitioner.³ In the affidavit, Ms. Farrell attests that after numerous attempts to obtain a petitioner and counsel statement in compliance with General Order #9, petitioner has failed to respond to counsel’s requests.⁴ Farrell Aff. at 1.

The undersigned has reviewed the materials submitted by petitioner’s counsel and finds that counsel has complied with the spirit of General Order #9, that is to ensure that petitioner’s out-of-pocket expenses are included with counsel’s fee request. Counsel’s representation as an officer of the court coupled with the efforts to communicate with petitioner satisfies the undersigned that petitioner’s interests were protected. That is the purpose of General Order #9. Thus, the court finds that petitioner’s counsel complied with General Order #9.

²Ms. Farrell is a paralegal employed at petitioner’s counsel’s law firm.

³According to Exhibit 17, Tab A, the \$120.00 was the court’s filing fee for a vaccine claim made in 1999.

⁴According to Ms. Farrell’s affidavit, on September 28, 2005, she sent petitioner a letter regarding her litigation expenses, explaining that petitioner could recoup out-of-pocket expenditures related to her vaccine claim. Farrell Aff. at 1; see Ex. 17, Tab A. Ms. Farrell then explains that since sending the September 28, 2005 letter, she phoned or e-mailed petitioner on October 4, October 11, October 25, November 11, and November 22 requesting that petitioner sign and return the petitioner and counsel statement. Farrell Aff. at 1. As of December 6, 2005, Ms. Farrell claims that she has received no response from petitioner. Id. at 1-2.

Accordingly, the court finds that an award of **\$14,728.13** in fees and costs is appropriate. The award shall be made payable jointly to petitioner and her attorney.⁵

The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

⁵This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, “advanced costs,” as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See Beck v. Secretary of Health and Human Services, 924 F.2d 1029 (Fed. Cir. 1991).