

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 05-1235V

Filed: April 20, 2010

PAMELA GIACCHI and GREG,
GIACCHI, parents of ANTHONY
GIACCHI, a minor,

Petitioners,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Decision on attorney fees & costs

DECISION ON AWARD OF ATTORNEY FEES AND COSTS¹

On December 17, 2009, petitioners filed a Motion for Enlargement of Time to File an Application for Attorneys' Fees and Costs along with petitioners' Application for Attorneys' Fees and Costs. The underlying Petition in this case was filed *pro se* on November 28, 2005, and assigned to another, subsequently-departed special master. An attorney at the law firm of Douglas & London, P.C., entered an appearance on July 14, 2006. Medical records were never filed in the case. Subsequently, petitioners filed a Notice of Intent to Withdraw from the Program on August 14, 2006, and an Order Concluding Proceedings issued on August 21, 2006. Vaccine Rule 13 states an application for fees and costs must be filed no later than 180 days after the entry of judgment or the filing of an order concluding proceedings; special masters have taken pains to enforce this rule.

In petitioners' Motion for Enlargement of Time, petitioners explained that the attorney handling this case left the law firm in late 2006. Following the close of the case and the attorney's departure from the firm, an application for fees and costs was inadvertently overlooked. When the error was discovered, an informal request for \$2,335.00 in attorney fees and \$530.53 in petitioners' own costs was sent via facsimile to respondent's counsel. This transmission was not received and petitioners resubmitted their request to respondent. Petitioners averred in the Application for Fees

¹The 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). 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.

and Costs that respondent does not object to the actual dollar amount requested. The undersigned also notes the costs borne by the petitioners themselves and is cognizant that the amount requested may impose a hardship on petitioners in certain circumstances.

The special master assigned to the case is no longer with the Court, and the case was transferred to the undersigned on December 22, 2009. A status conference was held with the parties on February 22, 2010, wherein respondent voiced concerns that the jurisdictional requirements of the underlying Petition were not evidenced and medical records were never filed. Petitioners agreed to transmit medical records to respondent for review in hopes of informally resolving objections over the jurisdictional requirements.

On March 8, 2010, respondent communicated to the undersigned's office that the records were received and there would be no objections based upon jurisdiction. Furthermore, due to the reasonable amounts requested, no objection would be raised regarding the timeliness of the application.

Upon review of petitioners' Application and the previous filings, the undersigned finds the requested amounts to be reasonable despite the petitioners' inadvertent late-filing of the Application. The undersigned grants petitioners' Motion for Enlargement of Time for good cause shown and, accordingly, petitioners are hereby awarded attorney fees and costs in the total amount of \$2,865.53 pursuant to Vaccine Rule 13. **The judgment shall reflect that petitioners are awarded \$2,335.00 in the form of a check made payable jointly to petitioners and petitioners' counsel. Petitioners are also awarded \$530.53 in the form of a check made payable to petitioners individually.** The court thanks the parties for their cooperative efforts in resolving this matter.

The Clerk is directed to enter judgment according to this decision.²

IT IS SO ORDERED.

Gary J. Golkiewicz
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

Furthermore, this 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.A. §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 generally, Beck v. Secretary of HHS, 924 F.2d 1029 (Fed. Cir. 1991).