

the parties during a conference call conducted on August 27, 2008.

Petitioner requested initially fees in the amount of \$28,418.75, costs for petitioner of \$134.75, and costs for counsel totaling \$1,807.55. Respondent did not contest counsel's hourly rate or the requested costs, but took issue with the number of hours spent by counsel on the case. In petitioner's reply to respondent, petitioner amended her cost request by \$750 for her expert, and requested \$1375.00 for time spent on the reply.

As stated, respondent's challenge to petitioner's fee request is in essence a general challenge to the number of hours spent by counsel on this case. Respondent also directed the court's attention to specific examples that support respondent's contentions. To resolve the dispute, the undersigned reviewed the file in the case and compared each action against counsel's time sheet and the description of how that time was spent. Next, the undersigned considered petitioner's counsel's rejoinders to respondent's specific examples of inordinate time spent on tasks. Having completed my review, the undersigned resolves the dispute as follows.

It is axiomatic that in assessing the number of hours reasonably expended, the court must exclude those "hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." Hensely v. Eckerhart, 461 U.S. 424, 434 (1983). The essence of petitioner's counsel's explanation for the hours disputed by respondent focused on his ethical obligation to zealously represent his client. The undersigned agrees that petitioner's burden and obligations to establish in the first instance her claim result in more hours expended when compared to respondent's counsel, or stated another way there is not a direct one-to-one comparison of time spent by counsel for respondent and petitioner. However, there should not be the wide disparity that is reported in this case, approximately a five-fold difference. Even factoring in counsel's indisputable obligation to represent zealously his client, the gulf between counsel in hours spent on this case is far too wide.

However, looking at two of the specific objections raised by respondent, time spent reviewing psychiatric records and records from Wayne Memorial Hospital, the undersigned agrees with petitioner that he had an obligation to review these records, and thus is entitled to bill for the time spent. Respondent argues that the psychiatric records had no bearing on the issues presented, but that is true with the vast majority of records submitted in every case. However, counsel is duty bound to review those records to make the determination of whether or not they are meaningful. Likewise with the largely duplicative set of records from Wayne Memorial Hospital, counsel had an obligation to review them to make certain that some meaningful record was not hiding amongst the 295 pages of records. Unfortunately, that takes time, time that counsel is entitled to be paid for.

While agreeing with petitioner on those issues, the undersigned agrees with respondent that petitioner billed too much time in handling a number of tasks. Examples given to the parties during the August 27 status conference included billing 1.5 hours to draft a petition that consists of six one-line paragraphs; 30 minutes should be more than enough. Another example, although

small in time spent it still raises concerns, is billing .15 hours or 9 minutes for reviewing routine orders like Notice of Assignment. These should be billed at the lowest possible time increment, which for petitioner is .10 hours or 6 minutes. Petitioner also spent far too long working on very routine status reports, in one instance spending a total of two hours on a very straightforward report. One last example was billing one hour to draft and file a one sentence Notice to Remain in the Program. It is simply inconceivable how so much time could be spent on such a simple matter. While each of these items involves relatively small amounts of time, that time adds up to a block of time that should not be billed to a client, and thus should not be billed to the Program.

Based upon the excess time spent on routine tasks, the undersigned is concerned with the amounts of time spent by counsel reviewing the records and literature regarding the involved vaccine. The issue is not whether counsel was entitled to perform these tasks, but the question is how efficient was counsel in performing the task. The undersigned's review indicates that respondent's questions about how much time was spent are to a certain extent well-founded.

In resolving this dispute, the undersigned notes the special master is entitled to utilize prior experience in fashioning an appropriate award and in doing so is not required to conduct a line-by-line analysis to explain the basis for whether and how much time is allowable. See Saxton v. Sec'y of Health & Human Servs., 3 F.3d 1517, 1521 (Fed. Cir. 1993)(approving the special master's 50% reduction in the number of hours claimed). Considering the number of hours requested and the time spent on the questionable items, the undersigned determines that a reduction of 20 hours is fairly warranted. Accordingly, petitioner is awarded costs in the amount of \$134.75 for petitioner and \$2,557.55 for petitioner's counsel. Petitioner's counsel is also awarded a total of \$24,793.75 for fees (\$28,418.75 plus \$1,375 less the \$5,000 reduction - 20 hours at \$250 per hour).

The undersigned also strongly suggests that counsel, who is highly respected by the undersigned, review his time-keeping system to ensure that it accurately reflects the time counsel is spending on his tasks, especially routine matters. If the system is accurate, then counsel must review his own actions to ensure that he is efficiently handling the processing of his cases.

Accordingly, pursuant to Vaccine Rule 13, petitioner is hereby awarded a **total of \$27,486.05 in attorneys' fees and costs**. The judgment shall reflect that petitioner is awarded \$134.75 for her costs in a check made payable to petitioner; petitioner is awarded \$2,557.55 for her counsel's costs in a check made payable jointly to petitioner and her counsel; and, petitioner is awarded \$24,793.75 for her counsel's fees in a check made payable jointly to petitioner and her counsel.² In the absence of a motion for review filed pursuant to RCFC, Appendix B, the

²This 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).

Clerk is directed to enter judgment according to this decision.³

IT IS SO ORDERED.

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Chief Special Master

³Pursuant 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.