

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-2662V

Filed: July 24, 2012

Not to be Published

COLIN MCNARY, a minor,
by his parents and natural guardians,
TIM MCNARY and MIA MCNARY,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

Autism; Attorneys' Fees and Costs

DECISION AWARDING ATTORNEYS' FEES AND COSTS ¹

On July 20, 2012, petitioners filed motions² for award of final attorneys' fees and reimbursement of costs in this case. Petitioners are entitled to reasonable attorneys'

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information, that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² Petitioners filed two separate motions for attorneys' fees and costs on July 20, 2012. The first motion, concerning attorneys' fees and costs for work performed by Conway, Homer & Chin-Caplan and Williams Kherkher, indicated that "respondent does not opposed this motion." Unopposed Motion for Decision at 5. The second motion filed, concerning costs for petitioners' former counsel, Clifford J. Shoemaker, indicated that

"[w]hile respondent maintains her objections to the costs and reasonableness of the services provided by Dr. Geier generally, respondent, without waiving any right to challenge Dr. Geier's participation in Program cases in the future, will not file an

fees and costs pursuant to §§ 15(b) and (e)(1). Respondent has reviewed the motion and does not object. Petitioners seek attorneys' fees and costs in the amount of \$5,555.00 for Conway, Homer & Chin-Caplan, P.C., an additional \$200.00 for work performed by Williams Kherkher, and \$900.00 in costs for petitioners' former counsel, Clifford John Shoemaker, for a total amount of \$6,655.00. In lieu of filing a Vaccine General Order #9 statement, petitioners' counsel represents that he will reimburse petitioners any costs that petitioners personally incurred that are compensable under § 15 (e)(1).

The request for attorneys' fees and costs is granted. Petitioners are awarded reasonable attorneys' fees and costs pursuant to §§ 15(b) and (e)(1), as I find that the petition was brought in good faith and upon a reasonable basis, and the amounts requested are reasonable and appropriate.

Pursuant to §15(e), I award a lump sum of \$6,655.00³ to be paid in the form of a check payable jointly to the petitioners and petitioners' counsel, Conway, Homer & Chin-Caplan, P.C.

In the absence of a timely-filed motion for review filed pursuant to Appendix B of the Rules of the U.S. Court of Federal Claims, the Clerk of the court shall enter judgment in accordance herewith.⁴

IT IS SO ORDERED.

s/George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master

objection in this case because doing so would not be an efficient use of Program resources.”

Motion for Attorneys Fees at 2 n.2.

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, “advanced costs” as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See generally Beck v. Sec’y of Dep’t Health and Human Services, 924 F.2d 1029 (Fed. Cir.1991).

⁴ Entry of judgment can be expedited by each party’s filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).