

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 98-916V

(Filed: May 21, 2009)

NOT TO BE PUBLISHED¹

THERESA CEDILLO and MICHAEL CEDILLO, *
as parents and natural guardians of Michelle *
Cedillo, *
*
Petitioners, * Vaccine Act Interim Fees;
* Fees for Omnibus Proceedings.
*
v. *
*
SECRETARY OF HEALTH AND *
HUMAN SERVICES, *
*
Respondent. *

DECISION AWARDING INTERIM FEES

HASTINGS, *Special Master.*

In this case under the National Vaccine Injury Compensation Program (hereinafter “the Program”), the petitioners seek, pursuant to 42 U.S.C. § 300aa-15(e), an interim award for attorneys’ fees and costs incurred in the course of the petitioners’ attempt to obtain Program compensation. After careful consideration, I have determined to grant the request in part at this time as it pertains to the Maglio Christopher & Toale law firm, for the reasons set forth below.

¹This document will not be sent to electronic publishers as a formally “published” opinion. However, because this decision contains a reasoned explanation for my action in this case, I intend to post it on the United States Court of Federal Claims’ website. Therefore, each party has fourteen days within which to object to the disclosure of any material in this decision that would constitute “medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” See 42 U.S.C. § 300aa-12(d)(4)(B)(2006); Vaccine Rule 18(b).

I

BACKGROUND

This case concerning Michelle Cedillo is one of more than 5,000 cases filed under the Program in which it has been alleged that a child's disorder known as "autism," or a similar disorder, was caused by one or more vaccinations. A detailed history of the controversy regarding vaccines and autism, a history of the development of the 5,000 cases in this court, and a history of the presentation of Michelle Cedillo's case as one of three "test cases" in the Omnibus Autism Proceeding were set forth in my Decision filed in this case on February 12, 2009, and will not be repeated here.

On August 19, 2008, the petitioners in this case filed their application for interim fees and costs. In their application, the petitioners sought a total of \$2,180,885.29 for interim fees and costs. Respondent filed a lengthy response on November 12, 2008, and the petitioners filed a lengthy reply on January 26, 2009. On November 18, 2008, I issued an interim costs award in this case reflecting the Cedillo family's out-of-pocket expenses, which primarily consisted of the family's costs to attend the evidentiary hearing. Neither party objected to that interim award. On March 11, 2009, I issued an interim award for fees and costs attributable to some of petitioners' attorneys: Conway, Homer & Chin-Caplan; Yen Pilch Komadina & Flemming, PC; and Williams Love O'Leary & Powers, PC. Neither party objected to that interim award.

On March 18, 2009, I issued an order stating that due to ongoing efforts by the parties to clarify the requests for interim fees and costs by petitioners' other attorneys, I would not act concerning the unresolved portions of petitioners' interim fees and costs petition until consultations between the parties had been concluded.

II

INTERIM FEES AND COSTS FOR MAGLIO CHRISTOPHER & TOALE

On May 20, 2009, Ms. Anne Toale, counsel for petitioners, reported to my law clerk that her firm, Maglio Christopher & Toale, was reducing its total request for interim fees and costs to \$28,000. Counsel for respondent reported to my law clerk, also on May 20, 2009, that respondent will not object to this amended request.

Further, on May 11, 2009, during an unrecorded telephonic status conference that pertained to both this case and the case of *King v. Secretary of HHS*, No. 03-584V, respondent's counsel, Lynn Ricciardella, stated that due to the unique nature of this *Cedillo* case as a "test case" in the Omnibus Autism Proceeding, respondent would not object to the issuance of a series of interim awards, one interim award as to each firm, to the several law firms that participated in the presentation of evidence in this case.

A detailed discussion of the appropriateness of an interim fees and costs award in this case, and also of the appropriateness of multiple interim fees and costs awards in this case, is set forth in my March 11, 2009, decision and will not be repeated here. The total figure requested here is reasonable and appropriate compensation for the services provided by Maglio Christopher & Toale through July 2008. Pursuant to 42 U.S.C. § 300aa-15, I hereby award a lump sum of **\$28,000**, to be awarded in the form of a check payable jointly to petitioners and their counsel of record. This amount is to be promptly forwarded to the law firm of Maglio Christopher & Toale.

In the absence of a timely-filed motion for review of this Decision, the Clerk of this court shall enter judgment accordingly.

/s/ George L. Hastings, Jr.

George L. Hastings, Jr.
Special Master