

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 04-1370V

(Filed: December 22, 2011)

NOT TO BE PUBLISHED¹

SHEN WANG, Guardian ad Litem for
TIFFANY KU,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Vaccine Act Interim Costs.

DECISION AWARDING INTERIM COSTS

HASTINGS, *Special Master.*

In this case under the National Vaccine Injury Compensation Program (hereinafter “the Program”), Shen Wang (“Petitioner”) seeks, pursuant to 42 U.S.C. § 300aa-15(e),² an “interim” award for litigation costs incurred in the course of Petitioner’s attempt to obtain Program

¹This document will not be sent to electronic publishers as a formally “published” opinion. However, because this document contains a reasoned explanation for my action in this case, I intend to post this document on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Therefore, each party has 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, this entire document will be available to the public. *Id.* See also 42 U.S.C. § 300aa-12(d)(4)(B).

²The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 *et seq.* (2006). Hereinafter, for ease of citation, all § references will be to 42 U.S.C. (2006).

compensation. After careful consideration, I have determined to grant the request in part, for the reasons set forth below.

I

PROCEDURAL BACKGROUND

Petitioner, Shen Wang, filed this petition on August 24, 2004, alleging that a vaccination injured her daughter, Tiffany Ku. On December 3, 2007, the Secretary of Health and Human Services (“Respondent”) filed a document conceding that petitioner is entitled to compensation on account of Tiffany’s injury.

Since that time, the parties have been attempting to settle the “damages” issue, but such efforts have not been fully successful, so that an evidentiary hearing concerning the damages issue was held on October 12-13, 2011.

On November 10, 2011, Petitioner filed an application for “interim costs” seeking an award of \$67,209. (Hereinafter “Pet. App.”³) Respondent filed an “Opposition” to Petitioner’s application on December 8, 2011 (hereinafter “Opp.”), and the matter was briefly discussed during an unrecorded status conference on December 12, 2011.

II

LEGAL STANDARD FOR AWARDING ATTORNEYS’ FEES AND COSTS

A. In general

Special masters have the authority to award “reasonable” attorneys’ fees and litigation costs in Vaccine Act cases. § 300aa-15(e)(1). This is true even when a petitioner is unsuccessful on the merits of the case, if the petition was filed in good faith and with a reasonable basis. (*Id.*) “The determination of the amount of reasonable attorneys’ fees and costs is within the special master’s discretion.” *Saxton v. HHS*, 3 F.3d 1517, 1520 (Fed. Cir. 1993); see also *Shaw v. HHS*, 609 F.3d 1372, 1377 (Fed. Cir. 2010).

Further, as to all aspects of a claim for attorneys’ fees and costs, the burden is on the *petitioner* to demonstrate that the attorneys’ fees claimed are “reasonable.” *Sabella v. HHS*, 86 Fed. Cl. 201, at 215 (Fed. Cl. 2009); *Hensley v. Eckerhart*, 461 U.S. 424, at 437 (1983); *Rupert v. HHS*, 52 Fed.Cl. 684, at 686 (2002); *Wilcox v. HHS*, No. 90-991V, 1997 WL 101572, at *4 (Fed. Cl. Spec. Mstr. Feb. 14, 1997). The petitioner’s burden of proof to demonstrate “reasonableness” applies equally to *costs* as well as attorneys’ fees. *Perreira v. HHS*, 27 Fed. Cl. 29, 34 (1992), *aff’d* 33 F.3d 1375 (Fed. Cir. 1994).

³Along with the application, Petitioner filed two exhibits documenting the claimed expenses, to which I will refer as Ex. 1 and Ex. 2.

One test of the “reasonableness” of a fee or cost item is whether a hypothetical petitioner, who had to use his own resources to pay his attorney for Vaccine Act representation, would be willing to pay for such expenditure. *Riggins v. HHS*, 2009 WL 3319818, at *3 (Fed. Cl. Spec. Mstr. June 15, 2009), *aff’d by unpublished order* (Fed. Cl. Dec. 10, 2009), *affirmed*, 40 Fed. Appx. 479 (Fed. Cir. 2011); *Sabella v. HHS*, 2008 WL 4426040, at *28 (Fed. Cl. Spec. Mstr. Aug. 29, 2008), *aff’d in part and rev’d in part*, 86 Fed. Cl. 201 (2009). In this regard, the United States Court of Appeals for the Federal Circuit has noted that--

[i]n the private sector, ‘billing judgment’ is an important component in fee setting. It is no less important here. Hours that are not properly billed to one’s *client* also are not properly billed to one’s *adversary* pursuant to statutory authority.

Saxton, 3 F.3d at 1521 (emphasis in original), quoting *Hensley*, 461 U.S. at 433-34. Therefore, in assessing the number of hours reasonably expended by an attorney, 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.” *Hensley* 461 U.S. at 434; see also *Riggins*, 2009 WL 3319818, at *4.

B. “Interim” fees and costs

In *Avera v. HHS*, 515 F. 3d 1343, 1352 (2008), the U.S. Court of Appeals for the Federal Circuit indicated that an award of “interim” fees and costs--that is, an award *prior* to the entry of a final judgment on the initial question of whether the petitioner is entitled to compensation for the alleged vaccine injury--can be appropriate in Vaccine Act cases. The *Avera* court did not specify in what *particular* circumstances such an award might appropriately be issued, but the court made it clear that such “interim” awards *can* be appropriate.⁴ The Federal Circuit gave the same indication again in *Shaw v. HHS*, 609 F. 3d 1372, 1373-74 (2010).

III

THE CIRCUMSTANCES OF THIS CASE JUSTIFY AN INTERIM AWARD OF COSTS AT THIS TIME

The *Avera* court did not provide a detailed set of guidelines concerning *in what situations* an award of interim fees is warranted in a Vaccine Act case. The court did afford some guidance,

⁴In many cases in recent months, respondent has raised a *legal argument* that an “interim” award is appropriate only in a very narrow set of circumstances--*i.e.*, *after* either an award of compensation resulting from the alleged vaccine injury has been made to the petitioners, or a judgment denying such compensation has been entered by the court. However, respondent has not raised such a legal argument in this case. And if respondent did, I would reject that legal argument for the reasons set forth in *Hirmiz v. HHS*, 2011 WL 2680721 (Fed. Cl. Spec. Mstr. June 13, 2011), at *3-5.

noting that “[i]nterim fees are particularly appropriate in cases where proceedings are protracted and costly experts must be retained,” and indicating that interim fees would be appropriate in order to avoid “undue hardship.” 515 F. 3d at 1352. But it appears to me that the *Avera* court’s quoted statements were designed merely to give *examples* and *general guidance* concerning when interim fees and costs might be awarded, leaving the special masters broad *discretion* to consider many factors in considering whether an interim award is appropriate in a particular case.

A. Prior cases

Since *Avera*, there has been a considerable amount of case law concerning the topic of when an interim fees award is appropriate. In *Avila v. HHS*, 90 Fed. Cl. 590, 598 (2009), a judge of this court opined that an interim fees award should be denied when--

a petitioner fails to demonstrate that he has suffered undue hardship: the amount of fees sought is not substantial; no experts were employed; and only a short delay in the award [would transpire in the absence of an interim award].

The judge added that the amount of \$9,882, involved in that case, “is not substantial.” *Id.* at 599.

In *Doe/11 v. HHS*, 89 Fed. Cl. 661 (Fed. Cl. 2009), the judge indicated that an interim award should be granted in a case in which (1) proceedings before the special master had been “protracted” (a period of nearly 10 years), (2) the petitioners had presented expert testimony at a trial, and (3) a “final” fees award would not likely take place for some time, due to an appeal.⁵

In *Dobrydneva v. HHS*, 94 Fed. Cl. 134, 148 (2010), the judge found that where the petitioners asserted that they needed funds in the form of an interim award in order to obtain testimony from an expert witness, such an award was justified.

In *McKellar v. HHS*, ___ Fed. Cl. ___, 2011 WL 5925323, at *8-9 (Fed. Cl. Nov. 4, 2011), the judge concluded that an interim award could be made in appropriate circumstances, but concluded that the special master in that case had not adequately explained why she found such an award to be appropriate in that case.

In *Franklin v. HHS*, 2009 WL 2524492, at *4-5 (Fed. Cl. Spec. Mstr. July 28, 2009), the special master found it appropriate to award interim fees, again in a situation where (1) the petition had been pending for a long time, (2) petitioner’s counsel had paid significant amounts to experts, and (3) final resolution of the case would likely take some time. He found that the above-described factors, taken together, constituted an “undue hardship” on petitioner’s counsel. (*Id.*)

⁵In *Doe/11*, the judge reversed the special master as to the *appropriate amount* of the interim award, but the special master below had actually concluded, like the judge, that an interim award *was* appropriate, due to the prior protracted proceedings and the fact that a pending appeal would likely delay the final fees award. See *Doe/11 v. HHS*, 2009 WL 1803457, at *4 (Fed. Cl. Spec. Mstr. June 9, 2009).

In *Hall v. HHS*, 2009 WL 3094881, at **1-2 (Fed. Cl. Spec. Mstr. July 28, 2009), the special master found an interim award to be merited where (1) the amount due to counsel (over \$64,000) was substantial, (2) the case had been pending about seven years, and (3) due to an appeal the attorney would likely have to wait a considerable additional time for that amount if an interim award was not issued.

In *Broekelschen v. HHS*, 2008 WL 5456319, at **2-3 (Fed. Cl. Spec. Mstr. Dec. 17, 2008), the special master again made an award for interim fees and costs. The special master found that the petitioner's attorney had incurred the substantial amount of \$150,000 in fees and costs, and that there was a significant possibility of a lengthy delay until final resolution of the case.

In *Masias v. HHS*, 2009 WL 899703, at **1-3 (Fed. Cl. Spec. Mstr. Mar. 12, 2009), a special master once more awarded interim fees and costs. The case had been pending for about 10 years, the amount awarded was significant (about \$48,000), and the special master found that a key factor justifying an interim award was, once again, the fact that without an interim award the petitioner's attorney would likely have to wait a substantial additional amount of time to receive that compensation.

In one case, Special Master Golkiewicz issued two different opinions, the first setting forth his *general* views as to the appropriate circumstances for an interim award, and the second actually awarding interim fees and costs in that case. *Kirk v. HHS*, 2009 WL 775396 (Fed. Cl. Spec. Mstr. Mar. 13, 2009), and 2009 WL 973158 (Fed. Cl. Spec. Mstr. Mar. 17, 2009). The special master disagreed with the respondent's argument that interim fees awards "should be the rare exception, not the rule." (2009 WL 775396 at *1.) Instead, he concluded that *Avera* provided special masters with "broad" discretion to determine whether interim fees were appropriate in a case, for the general purpose of "ensuring that petitioners are not punished financially while pursuing their vaccine claim." (*Id.*) The special master acknowledged that the *Avera* court stated that interim fees are "particularly appropriate" where the proceedings are protracted or costly experts had been obtained, but rejected the view that the *Avera* court meant those factors to strictly limit the circumstances for interim awards. (*Id.* at *2) Rather, the special master indicated that pursuant to *Avera*, a special master should consider whether, under the overall circumstances, "petitioners *or their counsel* will suffer an undue hardship" in the absence of an interim award. (*Id.*, emphasis added.) In that case, the amount involved was about \$15,000 in attorneys' fees plus a small amount of costs (*id.* at *1), and it appeared that the final resolution of the case might not take place for a considerable time period (*id.* at *2). The special master found that it would be an undue hardship for the "small" law firm involved in the case to go without those funds for "years." (*Id.*) The special master, accordingly, did make an award of interim fees and costs. (2009 WL 973158, at *1.)

In *MacNeir v. HHS*, 2010 WL 891145, at *1-4 (Fed. Cl. Spec. Mstr. Feb. 12, 2010), the special master granted an interim award of fees and costs in the amount of \$12,062, in a case in which the petitioners' counsel had expended most of the fees and costs in obtaining and filing medical records, and the case had been pending about seven years.

I also note that several of the decisions have specifically commented that under *Avera*, the special master's determination whether or not to make an award of interim fees and costs is a matter of *discretion* based upon all the circumstances of the case. *Broekelschen*, 2008 WL 5456319 at *2; *Hall*, 2009 WL 3423036 at *1-2; *Masias*, 2009 WL 899703 at *3.

B. This case

The overall circumstances of this case, in my view, are appropriate for an interim award at this time. First, it is clear that this case was brought in good faith and with a reasonable basis in fact.

Second, the overall circumstances of this case fit within the very broad guidelines suggested in the *Avera* opinion concerning the topic of when an interim award is appropriate. In this case, the petition has been pending since 2004. Petitioner seeks the substantial amount of over \$67,000 in costs. And it likely will still be at least a few months before the final decision is rendered in this case, because the “damages” issue is *very* complicated.

It is true, as Respondent has pointed out, that Petitioner has already received two awards of interim fees and/or costs in this case, including one just a few months ago. I heartily agree with respondent that in the vast majority of cases, a special master would be very unlikely to make more than one award for interim fees/costs in a single case. However, this case has some unique circumstances. Not only has the petitioner, Shen Wang, had to sacrifice her opportunity to work in order to care for Tiffany, but very unfortunately, Tiffany's father Cheng Ku, recently lost his job and has not yet found another. The family is in dire need of reimbursement at this time for costs incurred.

IV

AMOUNT OF THE AWARD

Petitioner seeks reimbursement for a number of separate items. Many of them are not well-explained, and thus will not be granted at this time. (Such requests could be renewed at a later date, with more evidence supplied in support thereof.)

Some of the items, however, are uncontested by respondent, and some others have enough support in the record for me to grant them at this time.

A. Initial discussion

Respondent points out, quite understandably, that Petitioner and her husband have incurred a number of costs that are unusual in a Vaccine Act case, and could arguably be considered unreasonable or duplicative. That is, in addition to utilizing the services of their experienced counsel of record, Mr. Gallagher, and a competent “life care planner,” Ellen Econs, Tiffany's parents have also consulted with a number of other professionals to obtain advice and assistance in forming and pursuing their “damages” claim. Their use of some of these additional services might, as

Respondent argues, be considered unreasonably duplicative of the work of Mr. Gallagher and/or Ms. Econs. However, Tiffany's parents are immigrants to this country and are not especially familiar with the U.S. legal system in general and with the Vaccine Act damages process in particular. They are understandably anxious about ensuring that the Vaccine Act award, to be determined in this case, will provide adequate care for Tiffany for the *rest of her life*. With the entire future of their daughter at stake, they have elected to consult with other professionals to provide them with additional reassurance that the amounts sought by Mr. Gallagher and Ms. Econs are adequate. While I myself have found Mr. Gallagher's and Ms. Econs' work in this case to be excellent, I can understand that Tiffany's parents, previously unfamiliar with Mr. Gallagher and Ms. Econs, sought additional legal, medical, and financial guidance by consulting other professionals, particularly with professionals based in the parents' home area in Seattle, with whom the parents are personally familiar. Given all the circumstances of this highly unusual situation, I cannot find that Tiffany's parents acted unreasonably in this regard. Accordingly, I will award funds for *some* consultations in this case that are somewhat unusual for Vaccine Act cases.

B. Dr. Fay

Respondent does not object to \$7,950 of the claim for Dr. Fay, including \$4,950 for an assessment performed in the fall of 2008 (\$250 intake; \$3,650 testing; \$1,050 consultation) (Opp. at 7-8), plus \$3,000 for Dr. Fay's preparation and hearing testimony in the fall of 2011 (Opp. at 8, fn. 7). Accordingly, for the fall of 2008, I allow those *conceded* amounts, as documented at Ex. 2, pp. 21-22 (intake \$250 on 7-15-08; testing \$3,650 on 7-24 to 8-4-08 and 9-3-08; consultation \$1,050 on 9-3-08, 9-12-08, 9-20-08, 11-17-08, 12-8-08). For the fall of 2011, I allow the conceded \$3,000, as documented at Ex. 2, p. 24 (\$3,000 on 10-11-11, 10-12-11), plus another (non-conceded) \$650 that also seems to constitute preparation for the October 2011 testimony (\$650 on 9-1-11 and 9-22-11).

I will also award additional funds for services performed by Dr. Fay that appear to me to be further reasonable expenditures for Dr. Fay's advice concerning life care issues. I award \$1,850 for preparation of a life care plan (9-29-08 and 10-22-08), as well as \$801 for testing and preparation of a forensic neuropsychological report (1-19-11, 1-28-11, 3-1-11).

As to the other amounts requested for Dr. Fay's services, some of them are not explained well enough that I can determine whether they were reasonably incurred. And respondent is correct (Opp. at 9) that amounts that in effect constitute interest are not properly payable by the Program.

C. Copy and Mail Expenses

These expenses (Ex. 1, pp. 33-35) appear proper and will be granted, in the total amount requested of \$119. (Respondent did not address this item.)

D. Dr. Brien Vlcek

Petitioner requests a total of \$4,058 (\$1,475 plus \$2,583) for the services of physician Dr. Brien Vlcek. (Ex. 1, p. 1; Ex. 2, p. 2.) Respondent concedes that Dr. Vlcek's time consulting with Mr. Gallagher and Ms. Econs should be compensated, but argues that his time consulting with Dr. Fay and Jane Vaccaro should not. (Opp. at 7.) I find, however, that it is reasonable to compensate Dr. Vlcek for his consultations with the latter two professionals, for the reasons set forth at pp. 6-7 above. Further, the claimed amounts appear reasonable and appropriate. Therefore, I will award the full \$4,058 sought for Dr. Vlcek.

E. Jane Vaccaro

While the work of Ms. Vaccaro could, as Respondent argues, arguably be considered unreasonably duplicative of that of Ms. Econs, I find that it was reasonable for Petitioner to utilize Ms. Vaccaro's services, for the reasons set forth above at pp. 6-7.

I also have carefully examined the time sheets for Ms. Vaccaro, most of which were, rather confusingly, filed in both Ex. 1 and again in Ex. 2. By my calculation, between 11-22-09 and 10-18-11, Ms. Vaccaro billed hours which, at her \$150 hourly rate, totaled \$9,480. I find those billings to be reasonable under the circumstances. Accordingly, I will award that amount for Ms. Vaccaro's services.

F. Guardianship expenses

In virtually all Vaccine Act cases in which substantial awards are made on behalf of a minor, the minor's parents and/or others are formally appointed by a local court as the guardians or conservators of the minor. This ensures that the award is subject to continued court supervision by the local court. In this case, on March 27, 2009, Petitioners filed Exs. 38-40 into the record of this case, indicating that on February 20, 2009, Petitioner and her husband were appointed by a local court as co-guardians of Tiffany's person and of her estate. In their costs application, they seek compensation for attorneys' fees incurred in the course of obtaining that appointment.

1. Legal issue

The legal issue involved here--*i.e.*, whether the costs of such guardianship proceedings are properly compensable in a Vaccine Act costs award--has been repeatedly litigated. As respondent notes (Opp. at 12), some opinions have answered that question in the negative. *E.g.*, *Mol v. HHS*, 50 Fed. Cl. 588, 591 (2001); *Siegfried v. HHS*, 19 Cl. Ct. 323, 325 (1990). However, other opinions have reached the opposite conclusion, allowing awards to compensate the fees and costs of creating a guardianship or conservatorship. *See, e.g.*, *Velting v. HHS*, 1996 WL 937626 (Fed. Cl. Spec. Mstr. Sept. 24, 1996)(awarding payment for expenses incurred to establish a conservatorship for the purpose of managing a Vaccine Act award); *Hill v. HHS*, 2007 WL 5160382 (Fed. Cl. Spec. Mstr. July 19, 2007) (allowing payment for establishing a guardianship in order to satisfy a requirement of respondent's proffer); *Haber v. HHS*, 2011 WL 839111 (Fed. Cl. Spec. Mstr. Feb. 14, 2011) (awarding expenses for establishment of a guardianship when it was required by respondent for the payment of a Vaccine Act award); *Cansler v. HHS*, 2011 WL 597791 (Fed. Cl. Spec. Mstr. Feb. 2,

2011) (awarding expenses for establishment of a guardianship trust that was required by respondent for the payment of a Vaccine Act award); *Lindsey v. HHS*, 2011 WL 6046605 (Fed. Cl. Spec. Mstr. Nov. 15, 2011) (awarding payment of guardianship expenses required by respondent in order to allow a Vaccine Act award); *Finet v. HHS*, 2011 WL 597792 (Fed. Cl. Spec. Mstr. Jan 31, 2011) (awarding guardianship costs that were mandated as a condition for receiving a Vaccine Act award); *Amar v. HHS*, 2011 WL 6077558 (Fed. Cl. Spec. Mstr. Nov. 10, 2011) (awarding costs for setting up a guardianship that was required as a condition of the parties' stipulation); *Thomas v. HHS*, 1997 WL 74664, (Fed. Cl. Spec. Mstr. Feb. 3, 1997) (awarding expenses related to establishing a conservatorship); see also *Capriola v. HHS*, No. 08-835V, slip op. (Fed. Cl. Spec. Mstr. Apr. 29, 2010) (awarding costs for establishment of an estate when probate was initiated solely for handling the Vaccine Act award); *Gruber v. HHS*, 2009 WL 2135739 (Fed. Cl. Spec. Mstr. June 24, 2009), vacated 91 Fed. Cl. 993, 2010 WL 966640 (Fed. Cl. 2010) (remanding the case for further proceedings but not reversing the special master's grant of fees for petitioner's probate attorney); *Shook v. HHS*, 2011 WL 845910 (Fed. Cl. Spec. Mstr. Feb. 15, 2011) (allowing payment for establishment of an estate that was required by the parties' stipulation); *Burgess v. HHS*, No. 07-258V, slip op. (Fed. Cl. Spec. Mstr. Mar. 29, 2011); *Sampt v. HHS*, 2011 WL 1629661, (allowing payment of the costs of probate proceedings required by the court).

I find the interpretation of the law on this point set forth in the *latter* group of cases to be substantially more persuasive. For the reasons detailed in my *Velting* opinion and in the other opinions cited above, I conclude that where, as here, it is necessary to set up a legal guardianship or conservatorship before the Vaccine Act award can be paid, the expenses of setting up such a guardianship or conservatorship are appropriately awarded as part of a Vaccine Act fees/costs award.

2. Award in this case

As noted above, Petitioner in this case appropriately consulted local counsel in order to obtain appointments for herself and her husband as co-guardians of Tiffany and Tiffany's estate, thereby ensuring that the Program award can be made to them in circumstances where the award will be immediately subject to appropriate local court supervision. Therefore, I find it appropriate to award a reasonable amount of funds for Petitioner's legal fees in this regard.

Unfortunately, however, the record in this case as it now stands does not make clear the appropriate *amount* of such an award. Petitioner has submitted bills from three law firms in this regard (Dussault Law Group, Burkett and Burdette, and Betts, Patterson & Mines). It is not clear exactly why an award would be appropriate for the first two firms. As to the Betts firm, the records do show that the firm assisted in obtaining the guardianship appointees. (See Ex. 40 filed on March 27, 2009; Ex. 2, pp. 9-15.) But these records also show that the work by the Betts firm related not only to the guardianship, but also to designing a "Special Needs Trust" (Ex. 2, pp. 13-15), and it is unclear whether services relating to such a trust are compensable by the Program. Further, the records also show that the Betts firm billed petitioner for services *after* the guardianship was accomplished (Ex. 2, pp. 15-17), and it is unclear why such services would be compensable by the Program.

Nevertheless, Respondent seems to have conceded (Opp. at 15) that at least \$4,269 was spent on “guardianship issues alone” (as opposed to Special Needs Trust issues) *prior* to the legal guardianship appointment on February 20, 2009. Therefore, I will award that amount at this time. But I cannot make any further award for these law firms’ services until Petitioner provides more evidence concerning this issue.

G. Partners in Care

The above-described Ex. 40 also shows that an entity known as “Partners In Care” was appointed as another co-guardian of Tiffany’s *estate*, along with her parents. Petitioner has submitted bills from Partners in Care for services performed from February 2009 through September 2011. But the record does *not* show precisely what services Partners in Care performed, in a situation where no award has yet been made for Tiffany, nor why it might be appropriate for the Program to compensate Petitioner for incurring such charges. Petitioner will need to supply additional evidence concerning this request. I can make no award for this item at this time.

H. Fahmy and Brook law firm

It appears that Petitioner first employed the Fahmy and Brooke law firm to work on researching and drafting a Vaccine Act petition on Tiffany’s behalf. (Ex. 2, p. 4.) Later, however, Petitioner instead engaged Mr. Gallagher, who actually filed a Program petition for Petitioner in 2004.

Respondent does not object to an award of \$983 (\$195 plus \$788) for services that the Fahmy firm provided in 2003 and 2004. (Opp. at 10.) I will award such amount. But it is not clear at this time whether it would be reasonable to award any *further* amounts for the services of the Fahmy firm. Petitioner will need to provide more evidence in order to obtain any additional award for this item.

I. Reid Case Management

As Respondent argues (Opp. at 6-7), petitioner has not provided an explanation for this item. This item is denied at this time.

J. Dr. Dietrich Klinghardt

The record does not contain adequate evidence for the reasonableness of this item, either, so the item is also denied at this time.

V

ADDITIONAL COMMENTS

As Respondent points out, Petitioner has incurred a very large amount of expenses, consulting many different professionals, during the years in which she has been pursuing a Vaccine

Act award. I admire the Petitioner's strong concern for the future welfare of her daughter, and her determination to obtain the best possible award for her daughter. But I do share Respondent's concern that not all of the expenses incurred by Petitioner may be completely reasonable. I urge Tiffany's parents to be aware of the fact that I cannot award Program funds for expenses unless they are reasonable. I urge Tiffany's parents to consult with Mr. Gallagher before incurring further expenses.

VI

SUMMARY AND CONCLUSION

I hereby make an award of interim costs in the amounts set forth below, for the reasons described in the pages above.

<i>A. Dr. Fay</i> (\$4,950 + \$3,000 + \$650 + \$1,850 + \$801)	\$11,251
<i>B. Copy & Mailing Expenses</i>	\$ 119
<i>C. Dr. Vlcek</i> (\$1,475 + \$2,583)	\$ 4,058
<i>D. Jane Vaccaro</i>	\$ 9,480
<i>E. Guardianship Appointment</i>	\$ 4,269
<i>F. Fahmy and Brooke</i>	<u>\$ 983</u>
<i>Total Awarded</i>	\$30,160

In the absence of a motion for review of this Decision, the Clerk of this court shall enter judgment in conformity with the Decision.

/s/ George L. Hastings, Jr.

George L. Hastings, Jr.
Special Master