

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-846V

Filed: September 28, 2011

SHARON E. RAYBUCK and RANDALL L. RAYBUCK, as Parents and Natural Guardians of MALACHI M. RAYBUCK,)	
)	
Petitioners,)	NOT TO BE PUBLISHED
)	
v.)	Attorneys' fees and costs; award in the amount to which respondent does not object;
)	reasonable basis
SECRETARY OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

Ronald L. Rosenfield, Ronald L. Rosenfield Co., LPA, Cleveland, O.H., for Petitioner;
Glenn A. MacLeod, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION ON FEES AND COSTS¹

LORD, Special Master.

Petitioners Sharon E. and Randall L. Raybuck ("Petitioners"), as parents and natural guardians of Malachi M. Raybuck ("Malachi"), filed an application for reasonable attorneys' fees and costs on September 15, 2011. The Court awards the amount to which respondent does not object.

Petitioners filed a petition on December 12, 2006, alleging that Malachi developed status epilepticus and encephalopathy from a trivalent influenza (flu) vaccination he received on December 12, 2003. Petition at ¶¶1a, c.² On November 9, 2010, based on careful review of the record as a whole, I ruled that Petitioners had not made out a prima facie case of vaccine causation under Althen v. Sec'y of Health & Human Servs., 418 F.3d 1274, 1280 (Fed. Cir. 2005), and issued a decision dismissing Petitioners' claim. Petitioners sought review of the decision on December 9, 2010, with the U.S. Court of Federal Claims. On May 12, 2011, the Court of Federal Claims, Judge Bruggink, affirmed my decision. Petitioners did not seek further review, and judgment dismissing the petition was entered on May 12, 2011.

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request the redaction "of any information furnished by that party (1) that is 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." Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of a timely objection, the entire document will be made publicly available.

² Status Epilepticus is defined as "a continuous series of generalized tonic-clonic seizures without return to consciousness, a life-threatening emergency." Dorland's Illustrated Medical Dictionary (30th ed. 2002) at 1756.

Even though the petition was dismissed and compensation denied, a petitioner who brings his petition in good faith and who has a reasonable basis for the petition may be awarded attorneys' fees and costs. See 42 U.S.C. § 300aa-15(e). Here, the docket reflects petitioners' counsel's active prosecution of their case from petition through appeal. Because petitioners' counsel acted in good faith and there was a reasonable basis for proceeding, petitioners are eligible for an award of attorneys' fees and costs. Respondent does not contend that petitioners failed to satisfy these criteria.

Petitioners seek a total of **\$44,024.18**, which amount includes \$31,340.82 in attorneys' fees and \$12,683.36 in litigation costs for petitioners' counsel. Additionally, petitioners filed a statement of costs in compliance with General Order No. 9, stating that petitioners incurred no reimbursable costs in pursuit of their claim. Respondent stated that she had no objection to this application for attorneys' fees and costs.

After reviewing the application, the court awards Petitioners the requested attorneys' fees and litigation costs. Accordingly, Petitioners are awarded:

A lump sum of \$44,024.18 in the form of a check payable to petitioners and petitioners' attorney, Ronald L. Rosenfield, Esq., for attorney's fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioners represent that all litigation costs were paid by their attorney and that they did not personally incur any costs in proceeding on the petition.

The court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.³

IT IS SO ORDERED.

s/Dee Lord
Dee Lord
Special Master

³ 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.