

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

PAMELA BALLARD, As Parent
And Natural Guardian of
KMB,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 10-296V
Special Master Christian J. Moran

Filed: December 22, 2011
Reissued: January 4, 2012

Attorneys' fees and costs; award
in the amount to which respondent
does not object

UNPUBLISHED DECISION ON FEES AND COSTS¹

Anne C. Toale, Maglio Christopher and Toale, Sarasota, FL, for Petitioner;
Voris E. Johnson, U.S. Department of Justice, Washington, D.C., for Respondent.

Petitioner Pamela Ballard, on behalf of KMB, filed an application for attorneys' fees and costs on December 12, 2011. The Court awards the amount to which respondent does not object.

Petitioner claimed that the Gardasil vaccine caused her child an adverse reaction, including seizures and severe headaches. See Petition, filed May 17, 2010. Petitioner was unable to establish causation and thus, requested a decision dismissing her petition. In this ruling, compensation was denied. Decision, dated Aug. 31, 2011.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document's disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Even though compensation was denied, a petitioner who brings her 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)(1). Here, counsel for petitioner spent time gathering medical records. After an investigation of the facts and science supporting petitioner's case, counsel realized that proof of causation was lacking and the case could not proceed. At this point, counsel took steps to resolve this case relatively quickly so as not to increase costs and expenses unnecessarily. Thus, because petitioner's counsel acted in good faith and there was a reasonable basis for proceeding, petitioner is eligible for an award of attorneys' fees and costs. Respondent does not contend that petitioner failed to satisfy these criteria.

Ms. Ballard seeks a total of **\$14,000.00** in attorneys' fees and costs for petitioner's counsel. Additionally, Ms. Ballard filed a statement of costs in compliance with General Order No. 9, stating that she incurred no out-of-pocket expenses while pursuing this claim. Respondent stated that she had no objection to this application for attorneys' fees and costs.

After reviewing the request, the court awards a check made payable to petitioner and petitioner's attorney in the amount of **\$14,000.00** for attorneys' fees and other litigation costs. The court thanks the parties for their cooperative efforts in resolving this matter.

The Clerk shall enter judgment accordingly.²

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

² 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.