

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

ESTHER HALL,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 02-1052V
Special Master Christian J. Moran

Filed: February 3, 2012

attorneys' fees and costs,
appellate litigation

Richard S. Gage, Esq., Richard S. Gage, P.C., Cheyenne, Wyoming, for Petitioner;
Melonie J. McCall, Esq., U.S. Dep't of Justice, Washington, D.C., for Respondent.

PUBLISHED SUPPLEMENTAL DECISION ON ATTORNEYS' FEES AND COSTS*

The petitioner, Esther Hall, established that a hepatitis B vaccination caused an injury to her shoulder and was awarded compensation. Decision, filed Dec. 4, 2008. She was also awarded attorneys' fees and costs. Ms. Hall is now requesting additional attorneys' fees, primarily for work her attorney performed in appealing an earlier decision regarding attorneys' fees and costs. Ms. Hall is awarded \$54,565.10.

Background

* Because this published 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 a decision or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

After Ms. Hall received her compensation for the harm caused by the hepatitis B vaccination, she filed a motion for attorneys' fees and costs. Due to the novelty of the issues presented in the motion, Ms. Hall's request was split into two parts. The amount of attorneys' fees that could not reasonably be disputed (\$51,854.55) and the amount of costs that could not reasonably be disputed (\$12,633.59) were awarded on July 28, 2009. Interim Fees Decision, 2009 WL 3094881. The disputed items were resolved in a Final Fees Decision, issued on October 6, 2009. 2009 WL 3423036 (2009).

Ms. Hall filed a motion for review of the October 6, 2009 decision. The Court of Federal Claims denied that motion.¹ Ms. Hall filed a motion for reconsideration, which the Court also denied. 93 Fed. Cl. 239 (2010).

Ms. Hall appealed the judgment of the Court of Federal Claims to the Federal Circuit. The Federal Circuit found that the amount awarded in attorneys' fees and costs was reasonable. Thus, the Federal Circuit affirmed the judgment. 640 F.3d 1351 (Fed. Cir. 2011).

Ms. Hall filed a petition for certiorari at the United States Supreme Court. The Court, however, denied this petition. Hall v. Sebelius, __ S.Ct. __, No. 11-260, 2011 WL 3812622 (Dec. 5, 2011).

On January 24, 2012, Ms. Hall filed the pending motion for attorneys' fees and costs, seeking \$54,565.10. Most work was performed by Ms. Hall's attorney, Mr. Gage, and most time was spent appealing the October 6, 2009 Final Fees Decision. The Secretary has not objected to the amount requested.

Analysis

When the Secretary has not objected to the amount requested in attorneys' fees, special masters typically do not write lengthy decisions discussing the amounts sought. However, even in the absence of an objection, special masters have an obligation to determine if the amounts requested are reasonable as required by 42 U.S.C. § 300aa-15(e) (authorizing special masters to award "reasonable" attorneys' fees). Savin v. Sec'y of Health & Human Servs., 85 Fed. Cl. 313, 317-18 (2008).

In Ms. Hall's case, some extra analysis is warranted because her pending request almost exclusively concerns appellate litigation. Within the last year, appellate litigation over attorneys' fees has increased. However, relatively few decisions explicitly discuss the compensation for that appellate litigation.

¹ The Court corrected the Final Fees Decision, which mistakenly double-counted some of the attorneys' work. The Court entered judgment for \$2,231.70.

Here, because Ms. Hall’s attorneys have submitted their timesheets to support the request for attorneys’ fees, it is possible to understand how much time was devoted to different aspects of Ms. Hall’s appellate litigation. A review of Mr. Gage’s timesheets show that he spent the following amounts of time in different phases of the case:

Summary of Request for Mr. Gage’s Work			
Phase	# of hours	hourly rate	subtotal
Litigating fees at the Office of Special Master	15.9	\$240	\$3,816.00
Motion for Review and Motion for Reconsideration at the Court of Federal Claims	46.8	\$240 or \$260	\$11,629.00
Appeal at the Federal Circuit (including time for travel)	66.6	\$260	\$16,657.00
Petition at the Supreme Court	72.5	\$260	\$18,772.00
Final fee petition at Office of Special Master	1.0	\$260	\$260.00
TOTAL	202.8		\$51,134.00

Mr. Gage also incurred approximately \$2,800 in costs for the work at the Federal Circuit and Supreme Court. The remainder of the amount requested derives from work performed by a paralegal. The total requested is \$54,565.10.

As previously mentioned, the Secretary did not oppose the amount requested. For each stage of the case, the bottom line figures are actually lower than amounts awarded for appellate litigation in other cases. See Broekelschen v. Sec’y of Health & Human Servs., No. 07-137V, 2011 WL 2531199 (Fed. Cl. Spec. Mstr. June 3, 2011), motion for review denied, 2011 WL 5600217 (2011). They are reasonable here.

This decision is not intended to set either a floor or a ceiling for appellate litigation. Each case is different and a reasonable amount of attorneys’ fees will vary. However, this case provides some information about the time spent by one attorney with a great deal of experience in the Vaccine Program on appellate litigation. For example, Ms. Hall’s appeal to the Federal Circuit was accomplished in approximately 65 hours. There may be some appeals in which 65 hours is not enough time and there may be some cases in which 65 hours is excessive. Yet, in Ms. Hall’s case, 65 hours was reasonable for her Federal Circuit appeal.

Conclusion

Ms. Hall has established that **she is entitled to award of attorneys’ fees and costs, totaling \$54,565.10**. This amount is in addition to amounts previously awarded. The Clerk’s

Office is instructed to enter judgment in accord with this decision unless a motion for review is filed.

IT IS SO ORDERED.

S/ Christian J. Moran
Christian J. Moran
Special Master