

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

STACEY HEINZELMAN, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND HUMAN SERVICES, *

Respondent. *

No. 07-01V
Special Master Christian J. Moran

Filed: September 20, 2012

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

PUBLISHED DECISION ON FEES AND COSTS¹

Richard Gage, Richard Gage, P.C., Cheyenne, WY, for Petitioner;
Ryan D. Pyles, U.S. Department of Justice, Washington, D.C., for Respondent.

Petitioner Stacey Heinzelman filed an application for final attorneys' fees and costs on August 30, 2012. On September 17, 2012, Ms. Heinzelman filed an amended application. The Court awards the amount to which respondent does not object.

Ms. Heinzelman claimed that the flu vaccine caused her to develop Guillain-Barré syndrome. She received compensation based upon the parties' proffer. Decision, filed Dec. 7, 2010. Because Ms. Heinzelman received compensation, she is entitled to an award of attorneys' fees and costs. 42 U.S.C. § 300aa-15(e).

Ms. Heinzelman has requested attorneys' fees and costs four times, including this application. On two occasions, she was awarded attorneys' fees and costs on an interim basis. Decision, filed on October 16, 2009, 2009 WL 3719215 (awarding \$67,544.36 in attorneys' fees and costs) and decision, filed on March 24, 2011, 2011 WL 7463322 (awarding \$31,177.79 in attorneys' fees and costs). Another application for an award of attorneys' fees and costs on interim basis was denied without prejudice on March 13, 2012. 2012 WL 1119389.

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

In the pending amended fee application, Ms. Heinzelman seeks a total of **\$52,000.00** in attorneys' fees and costs for her counsel's work.² The primary activity for which Ms. Heinzelman's attorney seeks an award of fees was successfully defending the judgment of the Court of Federal Claims at the Federal Circuit. See *Heinzelman v. Sec'y of Health & Human Servs.*, 681 F.3d 1374 (Fed. Cir. 2012). Counsel's work at the Federal Circuit also included motions that led to the Federal Circuit issuing orders for the Court of Federal Claims to modify how it entered judgment in Ms. Heinzelman's case. Additionally, Ms. Heinzelman's application requests compensation for her attorneys' work during periods covered by her earlier application for interim fees. Those two earlier decisions had calculated attorneys' fees using a relatively low hourly rate while preserving Mr. Gage's opportunity to seek an adjustment based upon other litigation. As a result of the outcome of the case involving Mr. Gage's hourly rate has now concluded, see *Hall v. Sec'y of Health & Human Servs.*, 640 F.3d 1351 (Fed. Cir. 2011), Mr. Gage is entitled to amounts in addition to those previously awarded. Overall, respondent stated that she has no objection to this amended application for attorneys' fees and costs.

After reviewing the request, the court awards **\$52,000.00** in a check made payable to petitioner and petitioner's attorney 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.³

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

² Ms. Heinzelman filed a statement of costs in compliance with General Order No. 9, stating that she incurred no litigation expenses for which she has yet to be reimbursed.

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.