

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

 DANIEL MARTZ and TARA MARTZ, *
 parents of C.M., a minor, * No. 12-329V
 * Special Master Christian J. Moran
 Petitioners, *
 * Filed: December 30, 2013
 v. *
 * Attorneys' fees and costs; award
 SECRETARY OF HEALTH * in the amount to which
 AND HUMAN SERVICES, * respondent does not object.
 *
 Respondent. *

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioners;
Lisa A. Watts, United States Department of Justice, Washington, D.C., for Respondent.

UNPUBLISHED DECISION ON FEES AND COSTS¹

On May 24, 2012, Daniel and Tara Martz filed a petition for compensation on behalf of their child, C.M., alleging that the pneumococcal conjugate, hepatitis A, and varicella vaccines C.M. received on June 5, 2009, caused him to suffer a neurological injury, later identified as a seizure and stroke and the residual effects of these injuries. Petitioners received compensation based upon the parties' stipulation. Decision, filed July 9, 2013. Because petitioners received compensation, they are entitled to an award of attorneys' fees and costs. 42 U.S.C. § 300aa-15(e).

On November 25, 2013, petitioners filed a motion for attorney's fees and costs ("application") in the above-captioned matter. In their application, petitioners requested attorneys' fees and costs in the amount of \$35,388.14. On December 5, 2013, respondent filed a response to petitioners' application disputing the reasonableness of \$7,915.26, for a "13-year guardianship bond pursuant to Court Order of October 28, 2013," and \$2,210.00, for "13-year accounting fee required pursuant to Florida Statute Section

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.

744.3678(4)(c).” Resp’t Resp. at 1-2. Respondent additionally argued that petitioners failed to demonstrate that these requested fees had been incurred, and that only “incurred” costs could be reimbursed under the Vaccine Act. Id. at 3.

On December 20, 2013 petitioners filed both their reply to respondent’s response as well as a supplemental motion for attorneys’ fees and costs requesting an additional \$2,253.50. In their reply, petitioners included affidavits from Phillip A. Baumann, the Martz’s guardianship attorney, and from Nicholas A. Hanky, Director of Jurisco, Inc. Petitioners additionally included a copy of the Jurisco, Inc. bond premium statement marked as paid, as well as a copy of the Martz’s personal check used to pay the bond premium to Jurisco, Inc.

Later on December 20, 2013, respondent filed a status report stating that, given the new information in the affidavits and reply filed by petitioners’ that same day, respondent had no further objection with respect to the supplemental costs or guardianship costs claimed by petitioners. Petitioners’ supplemental motion for attorneys’ fees and costs requested a total amount of \$37,641.64. The Court awards this amount.

Petitioners seek a total of **\$21,675.99** in attorneys’ fees and costs for his counsel. Additionally, in compliance with General Order No. 9, petitioners state that they incurred out-of-pocket litigation expenses of **\$15,965.65** while pursuing this claim. Respondent has no objection to the amount requested for attorneys’ fees and costs.

After reviewing the request, the Court awards the following:

- 1. A lump sum of \$21,675.99 in the form of a check made payable to petitioners and petitioners’ attorney, Ronald C. Homer of the law firm Conway, Homer & Chin-Caplan, P.C., for attorneys’ fees and other litigation costs available under 42 U.S.C. § 300aa-15(e).**
- 2. A lump sum payment of \$15,965.65 in the form of a check payable to petitioners, Daniel and Tara Martz.**

The Court thanks the parties for their cooperative efforts in resolving this matter. The Clerk shall enter judgment accordingly.²

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.

Any questions may be directed to my law clerk, Mary Holmes, at (202) 357-6353.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master