

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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PAMELA MYERS,

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Petitioner,

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v.

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

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Respondent.

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No. 11-49V

Special Master Christian J. Moran

Filed: May 1 2012

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

### UNPUBLISHED DECISION ON FEES AND COSTS<sup>1</sup>

Marc P. Picker, Reno, NV, for Petitioner;

Lara A. Englund, U.S. Department of Justice, Washington, D.C., for Respondent.

Petitioner Pamela Myers filed an application for attorneys' fees and costs on April 24, 2011. Ms. Myers filed an amended application on April 27, 2012. The Court awards the amount to which respondent does not object.

Ms. Myers claimed that the trivalent flu vaccine caused her an adverse reaction, including facial paralysis. See Petition, filed Jan. 18, 2011. Ms. Myers was unable to find an expert to establish causation and thus, requested a ruling on the record. In this ruling, compensation was denied. Decision, dated Apr. 18, 2012.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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 petitioners spent time gathering medical records for Ms. Myers. Counsel consulted an expert and then 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 Ms. Myers's counsel acted in good faith and there was a reasonable basis for proceeding, Ms. Myers is eligible for an award of attorneys' fees and costs. Respondent does not contend that Ms. Myers failed to satisfy these criteria.

Ms. Myers seeks a total of **\$6,200.00** in attorneys' fees and costs for petitioner's counsel. Additionally, Ms. Myers filed a statement of costs in compliance with General Order No. 9, stating that she incurred no litigation 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 **\$6,200.00** 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.<sup>2</sup>

**IT IS SO ORDERED.**

S/ Christian J. Moran

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Christian J. Moran  
Special Master

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<sup>2</sup> 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.